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THE CONCEPT OF AN ECCLESIASTICAL OFFICE IN THE *DECRETALES GREGORII IX* (1234) *

WHEN Jesus Christ established His Church, He created two offices, that of the supreme ruler, the Pope, and that of his subordinates throughout the world, the bishops. When He appointed these rulers of His earthly kingdom He conferred upon them the powers necessary to fulfill the mission which He had determined for His Church, namely, to teach, govern, sanctify, and save all men. "All power in heaven and on earth has been given to me," He said, "go, therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you." [1] With the development of Christianity, however, these officials were unable personally to attend to this mission. Consequently, they fulfilled their task by sharing these powers with others, and so in the course of time various ecclesiastical offices arose.

Fundamently, a sacred or ecclesiastical office has a particular relation to the hierarchy of jurisdiction in the Church. Christ gave to His Apostles and their successors a twofold power, that of orders, for providing men with the supernatural means of salvation which He instituted, and that of jurisdiction, for ruling and governing men towards the attainment

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[1] Matt. 28, 18-20.

of their eternal destiny. By divine institution these two powers exist in the Church in hierarchies, i.e., in various degrees they are participated in by a special body of men known as the clergy. The hierarchy of orders is made up of bishops, priests, and ministers; that of jurisdiction is made up of the Supreme Pontiff and the subordinate bishops, but these two grades of jurisdiction, established by divine authority, have by ecclesiastical law been augmented with others, which partake of their power in various degrees.

There are a number of differences between the power of orders and jurisdiction, but the one of chief interest here is the mode of acquisition. The power of orders is acquired by sacred ordination alone; that of jurisdiction, either by a properly performed deputation, as in the case of the Supreme Pontiff, or, for all other grades, by a canonical mission, namely, a legitimate mandate of a superior, the validity of which mission is regulated by the power and laws of the Church. From this sharing of powers then arose the canonical institute known as an ecclesiastical office.

Needless to say, the constitutive elements of an ecclesiastical office have varied somewhat throughout the history of the Church. The purpose of an ecclesiastical office, however, has always been that of aiding the Church in the attainment of its end, namely, the eternal salvation of men. In practice, to determine what were the necessary elements and the extent of jurisdiction have posed problems for the canonists in the practical determination of what constitutes a true ecclesiastical office.

In a study of the mediaeval canonical sources one finds no specific treatment given to this concept. Rather, these sources speak profusely of concrete entities, as for example the office of bishop, archdeacon, legate, judge, and so forth, and deal for the most part in great detail with the many duties and functions connected with these offices, and most frequently identify these functions with the office itself. One may glean, however, from a more searching analysis of the

mediaeval legislation and writings that this term had varied significations in the mind of the canonists. It was often used to signify the exercise of the powers received in ordination; however, it was also used to designate dignities, positions of pre-eminence, and even the exercise of simple administrative powers. The term, in other words, had a relative meaning only, that is, one which was contingent upon the context in which it was employed.[2]

The first step in this present analysis of the constitutive elements in the mediaeval concept of an ecclesiastical office will revolve around the compilation of the illustrious Spanish Dominican, Saint Raymond of Peñafort, known to posterity as the *Decretales Gregorii IX.*

Almost a century had passed since the monumental work of Gratian had been introduced into the law schools of Europe. During these years the legal sciences were developing under the watchful eye of the Apostolic See in co-operation with the schools at Bologna, Paris, and elsewhere. Truly the *Decretum Gratiani* ushered in a new epoch in canonical jurisprudence. The *Magister* himself had synthesized all canon law of previous generations. This, however, was not to be his greatest contribution; rather, his development of canon law into a systematic science was to leave its mark on all future canonical studies. As a result the ecclesiastical legal sciences were born and the great schools which were to foster and develop them blossomed forth in mediaeval Europe.

2 The term *officium* was used by the Roman lawyers in various ways. For example, it referred to the moral duties originating in family relationship or friendship (*officium amicitiae*): it likewise referred to the duties connected with the defense of another's interests (*officium tutoris, curatoris, advocationis*). In public law, *officium* denoted the official duties of any person employed in public service as well as the office (bureau) of a magistrate together with its personnel. The term was also applied to provincial offices and officials, and in particular to provincial governors. The first book of the *Digest* and of the *Code* contain a large number of titles dealing with the duties of various imperial officials in Rome and in the Provinces. Several jurists (Venuleius, Ulpian, Paul, Arcadius Charisius) wrote monographs "*De officio*" of higher governmental officials. Inst. IV, 17; Dig. I, 10-22; C. I, 40, 43-46; XI, 39.

Canon Law, however, did not remain dormant. It was a practical science, constantly unfolding and evolving. The Church was broadening its frontiers, and bringing all life under its watchful care. Paralleling this came a similar development in the practical running of the Church. The Roman Curia was constantly besieged to solve the difficulties arising in the various dioceses. The Roman Pontiffs set about solving these problems through their decretal letters to the bishops who sought their counsel. These letters eventually began to form a supplementary body of ecclesiastical discipline, not that new legislation was necessarily always involved, but rather that a new approach in canonical jurisprudence was evolving.

Eventually these decretal letters were collected by various masters in the schools as well as other canonists (e.g. by Ioannes Teutonicus, Bernard of Pavia, and Bernard of Compostella) and were used in the schools as texts supplementary to the Master's *Decretum.* Some of these collections came to be known as the *Compilationes Antiquae,* or the *Extravagantes,* since they contained the law which was not a part of the *Decretum Gratiani.* Many of these collections preceded the publication of the *Decretales Gregorii IX.* The last of these was an authentic collection sent by Gregory's immediate predecessor, Honorius III, to the school at Bologna with the Bull of promulgation *Novae Causarum* of May 2, 1226.

It is quite easy to see then how these varied compilations of canonical legislation could produce a mass of confused thinking because of the duplication of sources and the multiplicity of norms established by the developing curial practices.

At the death of Honorius III, therefore, his nephew, Cardinal Ugolino, who as Gregory IX succeeded him, set about immediately to remedy this situation. A canonist himself and once also a professor at the University of Bologna, the new pontiff, early in his reign, even though an old man of 82, gave serious thought to the codification of the existing canon law. This momentous task he entrusted to Raymond of Peñafort,

directing him to form a new collection from all pre-existing compilations.

After four years (1230-1234) of serious study and work the new compilation of canon law was finally completed. On September 5, 1234, with the Papal Bull, *Rex Pacificus*, the new collection was officially promulgated and sent to the schools at Bologna and Paris.

It should be remarked here that the collection known as the *Decretales Gregorii IX* is not to be considered as a scientific codification of canon law; it is to be viewed rather as a practitioner's handbook. Therefore, when one is occupied with the problem of trying to establish some particular institute of law, as for example an ecclesiastical office, it is not to be expected that a canonical treatise on this or any other institute will be found in the text, rather one must be contented with analyzing the basic canonical problems and decisions as found in the pontifical rescripts in order to arrive at a correct solution of the question at hand.

Article 1. The Generic Use of the Term Officium

section 1. the liturgical sense

It is readily admitted by most canonists that the concept of an ecclesiastical office has never been very precisely defined. At different periods in history the term has had various connotations. Since it is a rather generic concept in itself, one can easily understand how this would naturally result. This is especially true in ecclesiastical parlance, where one finds that the concept is used not only in a juridical sense, but likewise in a liturgical sense.

As far back as the writings of Saint Isidore of Seville and Saint Ambrose [3] one notes that the term, in some instances at least, came to signify a liturgical action. The Mass, sacraments, etc., were referred to as "*divina officia.*" This rather loose usage of the term occurs in the Decretals as well. In

[3] J. P. Migne, *Patrologiae Cursus Completus, Series Latina* (221 vols., Parisiis, 1844-1864), XIV, 51 ff.; LXXXIII, 738 ff.

fact, Saint Raymond devoted one title of the third book precisely to this.[4]

In like manner the term pointed to the canonical hours which every cleric was bound to recite. In the words of the IV General Council of the Lateran (1215):

> . . . Haec igitur et similia sub poena suspensionis penitus inhibemus, districte praecipientes in virtute obedientiae ut divinum officium nocturnum pariter et diurnum, quantum eis dederit Deus, studiose celebret pariter et devote.[5]

SECTION 2. OFFICIUM AS A TRUST

The concept of an office has another significance in decretal legislation. In these instances the sense seems to be of some trust, service, or function attached to an occupation or position. To illustrate this, the following chapter might be cited:

> . . . monachi possunt ad ecclesiarum parochialium regimen in presbyteros ordinari, ex quo debent praedicationis officium (quod privilegiatum est) exercere . . .[6]

The gloss at this place seems to imply that the preaching office as such was a position of trust and ministration conferred upon a worthy candidate by an act of delegation of power, since either the bishop or the Holy See had to intervene. It should be noted here that this concept of an office

[4] X, III, 41: "De celebratione Missarum, sacramento eucharistiae, et aliis divinis officiis."

[5] X, III, 41, 9, which is canon 17 of IV Lateran as found in Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio* (53 vols. in 60, Parisiis, Arnhem, Lipsiae, 1901-1927), XXII, 1006 (hereafter cited Mansi). The glossator's notation at the words *studiose et devote* in this text are worthy of note: ". . . . studiose ad officium oris, i.e., sine syncopa. Devote, quantum ad officium cordis . . ."

[6] X, III, 35, 5, which is a decretal letter of Innocent III as catalogued in Augustus Potthast, *Regesta Pontificum Romanorum inde ab anno post Christum natum*, MCXCVIII ad annum MCCCIV (2 vols., Berolini, 1874-1875) no. 1329 (hereafter cited Potthast). *Glossa ordinaria*, s.v. *privilegiatum*: "In hoc est privilegiatum officium praedicandi: quia nemo debet praedicare, nisi ei sit commissum ab Episcopo loci, vel ab apostolica sede (X, V, 7, 13) et illi qui per electionem ad hoc eliguntur."

does entail a participation in the ministerial as well as the magisterial authority which Christ gave to His Church at its foundation. It is not, however, too specific since it involves only one facet of these powers.

Somewhat similar to this is the canonical visitor's office, which is mentioned at various places in the decretals.[7] This functionary, in virtue of power delegated either by the Apostolic See or by the ordinary of the place, conducted the canonical investigation of the diocese to which he was assigned, thus participating in a limited way in the papal or episcopal authority of the grantor.[8]

SECTION 3. THE OFFICE OF THE COADJUTOR

Yet another aspect in this generic concept of an ecclesiastical office can be gleaned from an analysis of several of the decretals under the title: "De clerico aegrotante vel debilitato."[9] At this place Saint Raymond was concerned with the rector of a church or with a bishop who has been stricken with leprosy. One can easily imagine the position occupied in society by those who were afflicted with this horrible malady. The compiler began with a decretal of Lucius III (1181-1185):

> De rectoribus ecclesiarum leprae macula usque adeo infectis, quod altari servire non possunt nec sine magno scandalo eorum qui sani sunt ecclesias ingredi, hoc volumus te tenere, quod eis dandus est coadiutor, qui curam habeat animarum et de facultatibus ecclesiae ad sustentationem suam congruam recipiat portionem.[10]

[7] For example in X, I, 3, 26: ". . . cui visitationis officium in civitate ac dioecesi Bononiensi commisimus."

[8] Another office of this type is the *officium legationis*. For further details see X, I, 41, 5, and X, III, 5, 37.

[9] X, III, 6.

[10] X, III, 6, 3 which is catalogued in Jaffé, *Regesta Pontificum Romanorum ab condita Ecclesia ad annum post Christum natum MCXCVIII* (ed. 2, correctam et auctam auspiciis Gulielmi Wattenbach curaverunt F. Kaltenbrunner, P. Ewald, S. Loewenfeld, 2 vols., 1885-1888). This compilation was edited by P. Ewald for the years 590-882, and is cited JE; by F. Kaltenbrunner

It seems that this *vicarius adiutor* was charged with the administrative duties in the church, since its ailing rector was unable to carry them through. The institution of this adjutant provoked considerable discussion among the commentators, as the glossator noted. Huggucio (+ 1210) [11] was of the opinion that an injustice was done to the rector, since he was in no way responsible for his incapacity, ". . . ita sine culpa punitur, quod esse non debet." [12] Others made a distinction between bishops and lower prelates. The bishop was not to be removed; he was to be given a coadjutor. Lesser prelates and clerics lower than a bishop were to be removed, and a successor was to be appointed in their stead. Laurentius Hispanus,[13] however, rejected this opinion. According to him the incumbent remained in office as far as the title to that office was concerned; he was merely to be removed from the actual exercise or administration of the office, and a coadjutor was to be supplied, ". . . et quod dicit hic ab administrationis officio debet removeri: quod est in actu, sed quo ad ius retinebit officium." [14] This indeed marks an important evolutionary step in the mediaeval jurisprudence on ecclesiastical offices. For the first time a scientific analysis of the facets in

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up to the year 590, and is cited JK; and by S. Loewenfeld for the years 882-1198, and is cited JL. JL n. 14965. The following decretal of Clement III (1187-1191) further defined the role of this parochial adjutant: "...De sacerdote qui divino iudicio, leprae morbo repercussus, in parochiali ecclesia praelationis officio fungitur, dicimus quod pro scandalo et abominatione populi, ab administrationis officio debet removeri, ita quidem, quod iuxta facultates ecclesiae sibi necessaria, quamdiu vixerit, ministrentur." X, III, 6, 4; JL n. 16607. The gloss thus explained the *officium praelationis*: "... ergo ille coadiutor videtur esse praelatus, ex quo habet curam animarum."

[11] "Summa Huggucionis, Pisani, Magistri Bononiensis, postea Episcopi Ferrariensis (1190-1210), maximi momenti est; ante a. 1188 non est absoluta."—Van Hove, *Prolegomena*, p. 435.

[12] *Glossa ordinaria*, ad X, III, 6, 4, s. v. *administrationis*.

[13] "Laurentius Hispanus, discipulus Azonis, professor Bononiensis, magister Bartholomaei Brixensis, qui postea verisimiliter factus est episcopus Auriensis (Orense) ab anno 1218 ad annum 1248." Van Hove, *Prolegomena*, p. 443.

[14] *Glossa ordinaria*, ad X, III, 6, 4, s. v. *administrationis*.

the notion of a sacred office distinguished the purely functionary element (*in actu, exsecutio officii*) from the canonical concept as such. In other words, the juridic concept of an ecclesiastical office was no longer equivalent to the exercise of ministerial power, it now became a distinct canonical entity, an institute of law existing apart from any mere executory power.

SECTION 4. OFFICIUM AND ORDO

Our examination of the concept of an ecclesiastical office in the *Decretum Gratiani*[15] established that, for Gratian at least, *officium* was equivalent to sacred orders and the powers and functions inherent in this sacrament. This same signification finds expression in the decretals as well. A decretal of Clement III (1187-1191) to the archbishop of Ravenna bears this out:

> Significavit nobis R. archipresbyter Sancti Stephani, quod B. presbyter (credens se obsequium praestare Deo) fecit sibi virilia amputari, *et infra.* Quocirca mandamus (quatenus si iam dictum presbyterum alias Deo dignum inveneris, ei sacerdotale officum absque altaris ministerio), authoritate nostra fretus et tua, prout videris expedire, concedas.[16]

Another instance wherein this same sense is employed occurs in a decretal of Eugene III (1145-1153):

> Presbyterum cuius digitos cum medietate palmae a praedone abscissos significasti, missam non permittimus celebrare: quia nec secure propter debilitatem nec sine scandalo propter deformitatem membri hoc fieri posse confidimus. Ipsum autem ceteris officiis sacerdotalibus fungi minime prohibemus.[17]

[15] Donald E. Heintschel, *The Mediaeval Concept of an Ecclesiastical Office* (Washington, The Catholic University of America Press, 1956), pp. 16-32.

[16] X, I, 20, 4; JL n. 16591. *Glossa ordinaria*, s. v. *officium*: "Sicut baptizare, poenitentiam dare, et alia officia praeter officium Missae, et alia similia, quae solis sacerdotibus sunt concessa." The rubric to the text reads: "Sacerdos qui sine causa virilia sibi fecit abscindi, credens inde mereri, de dispensatione episcopi suum officium (praeter altaris ministerium) poterit exercere."

[17] X, III, 6, 2. See also: X, I, 11, 10; X, I, 11, 13; X, I, 12, c. un.; X, I, 13, 1; X, I, 14, 15; X, I, 20, 6; X, I, 21, 6; X, I, 37, 3; X, III, 34, 9.

Article 2. Some Typical Mediaeval Ecclesiastical Offices

In the following article an analysis of certain ecclesiastical offices which are mentioned in the *Decretales Gregorii IX* is presented. This does not propose to be a comprehensive treatment of these ecclesiastical positions, but rather one which attempts to show their nature. The writer has also omitted in this context any localized customary developments, thus limiting the statement to the common law definition of these offices. Having established the essential elements that constituted these offices, one should then be able to formulate a definition of this canonical institute at this period in history.[18]

[18] X, I, 23—X, I, 28. The source of some of these texts remains an enigma to the historian:

Compilatio I	*Collectio Lipsiensis*	*Collectio II Parisiensis*
Ex libro Romani ordinis "Ut archidiaconus..."	eadem inscriptio	eadem inscriptio
I, 15, 2 (X, I, 23, 1)	33.1	5.1
Ex concilio Toletano "Ut archipresbyter..."	eadem inscriptio	eadem inscriptio
I, 16, 1 (X, I, 24, 1)	33.6	6.1
Ex libro Romani ordinis "Ut primicerius..."	eadem inscriptio	eadem inscriptio
I, 17, c. un. (X, I, 25, c. un.)	33.10	7.1
Ex concilio Toletano "Ut sciat sacrista..."	eadem inscriptio	eadem inscriptio
I, 18, c. un. (X, I, 26, c. un.)	33.11	8.1
Ex libro Romani ordinis "Custos ecclesiae..."	eadem inscriptio	eadem inscriptio
I, 19, 1 (X, I, 27, 1)	33.12	9.1

All of these texts are derived from a short treatise in eight chapters on *officia*, which is variously found as an appendix to the *Collectio Anselmo dedicata* (MS Vercelli XV: cc. 1-4, 6-8); Burchard's *Decretum* (Pistoia MS, Cath. Chapter 119: cc. 1-4, 5 frag., 6 separately); Ivo of Chartres' *Panormia* [Venice, Bibl. Marciana *lat.* IV: 51 (Valentinelli VIII. 12: cc. 1-5)] and which was edited and discussed by A. Gaudenzi, "Il monasterio de Nonantola, il ducato di Persiceta e la chiesa de Bologna," *Bulletino dell' Istituto storico italiano*, XXXVII (1916), pp. 395-404, who wrongly supposes that a lost *Ordo* of Nicholas I was the original source. For confirmation see: Stephen Kuttner, "*Cardinalis*: the history of the canonical concept," *Traditio*, III (1945),

SECTION 1. THE ARCHDEACON

One of the principal offices which canonical legislation established in order to furnish assistance to the bishop in carrying on the work of the Church was that of the archdeacon. The term itself is derived from the Greek, and means the first or chief among the class of deacons. The use of the term is found in Christian antiquity. At that time the archdeacon assisted the bishop in administrative work, and presided over the College of Deacons, a remnant of the Apostolic Church.[19] Gradually his duties were augmented. They consisted in attending the bishop at the altar, and at ordination, and in assisting him in managing the revenues of the Church and in directing the deacons in their duties. By the twelfth century the office of the archdeacon had become a very important ecclesiastical position, since by that time the law itself had assigned to him a proper jurisdiction.[20] By virtue of his office, the archdeacon of the cathedral church was, next to the bishop, the regular organ of supervision and discipline in the diocese. The duties which were attached to his office centered for the most part in the exercise of the power of jurisdiction.

A decretal of Innocent III (1198-1215) outlines the principal duties of the archdeacon as well as the ambit of his vast powers.[21] He held the major position after the bishop and

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p. 161, n. 30. *Inscriptio* in the Venice MS: "Institutum a ss. patribus et viris apostolicis S.R.E.... ex libro romani ordinis;" Pistoia MS: "Ex libro ordinis romani." The relation of the cited texts to Isidore's letter to Leofred of Cordova (D. XXV, 1) has not been sufficiently examined. For details on Isidore's letter see: Heintschel, *op. cit.*, pp. 26-32. Although the spurious chapter on the *Archipresbyter* (Compilatio I: I, 16, 1) was incorporated in Gratian's text of the letter, the other chapters, even though they are substantially similar, are divergent enough to rule out any direct interdependence.

[19] Acts, 6.

[20] In mediaeval parlance the archdeacon was quite frequently referred to as the *praepositus* or provost, while his counterpart, the archpriest, was referred to as the *decanus* or dean.

[21] X, I, 23, 7; Potthast, n. 5031.

was his perpetual vicar.[22] He was likewise referred to as the "*occulus episcopi.*"[23] This title indicates his close association with the bishop. It was conferred upon him because it was his duty to point out what should be corrected and amended throughout the diocese. The archdeacon was the official superior of the subordinate clergy, since he exercised a certain surveillance over the discharge of the duties which were assigned to these clerics.[24]

The primary duties of the archdeacon were the following: to see to it that the divine offices were rightly performed, to take care of the sacred vessels and the treasury of the church, to restore the churches when this was necessary, to visit those churches which were within the limits of the diocese, to examine the candidates for orders and those who were prepared for appointment to benefices, and to present them to the bishop that they might be approved and instituted in their benefices. The archdeacon likewise possessed some judicial authority in that he could hear and decide the causes which did not involve grave matters, as well as correct abuses and settle other minor difficulties.[25]

Although the archdeacon possessed wide ecclesiastical powers, nevertheless in some instances this power was curtailed. First, the archdeacon could not in virtue of his office make appointments to benefices without the special mandate of the bishop, as one learns from a decretal of Alexander III (1159-1179).[26] Second, the archdeacon could not issue dimissorial letters for those who were about to be ordained.[27] According to Honorius III (1216-1227) the archdeacon did not have jurisdiction over regulars unless general or particular

[22] X, I, 23, 1.

[23] X, I, 23, 7.

[24] *Glossa ordinaria*, ad D. XXV, 1, s. v. *archidiaconi.*

[25] X, I, 23, 1, 3, 6, 7, 9.

[26] X, I, 23, 4; JL, n. 13898.

[27] X, I, 23, 8; Potthast, n. 835.

custom attributed such authority to him.[28] Fourth, Alexander III in a decretal to the bishop of Worcester stated that the archdeacon lacked the power to inflict an excommunication.[29]

According to the mediaeval common law these jurisdictional powers of the archdeacon extended over the whole diocese. In the mediaeval canonical parlance he must be regarded as having a true *dignitas,* because he had jurisdiction which he was able to exercise in his own name, and in a permanent and stable manner as the perpetual vicar of the bishop.

Normally the archdeacon was not ordained to the priesthood, which was one of the necessary qualifications for the incumbent of the archpriest's office. Although in virtue simply of his orders the archdeacon was lower in rank, yet by reason of his wide jurisdictional powers he was above the other members of the episcopal curia, and thus in this sphere he was truly the *alter ego* of the bishop.

SECTION 2. THE ARCHPRIEST

In the Middle Ages the office of the archpriest ranked next to that of the archdeacon. In the early ages of the Church reference is made to a college of priests established in individual churches under the direction of the bishop. With the spread of the Faith and the development of the Church the bishop was personally unable to attend to all the affairs of his office. Consequently, he shared his powers with others. To assist him in caring for the poor, the sick, the orphans, and the widows, an assistant was appointed who became known as the archpriest. The term *archipresbyter* meant the first and worthier among the priests, who presided over and commanded the priests in all matters which pertained to their priestly office. He was in truth the *princeps sacerdotum* and, though he retained simply a priestly rank, he excelled others

[28] X, I, 23, 10; Potthast, n. 7723.

[29] X, I, 23, 5; JL, n. 13166.

because of the authority which was conferred upon him.[30] The archpriest of the cathedral church was sometimes referred to as the *decanus*.[31] He was the vicar of the bishop in all matters concerned with the spiritual welfare of the diocese, while his counterpart, the archdeacon, was the vicar of the bishop in all matters connected with the external government and public welfare of the diocese.[32]

In antiquity there was only one archpriest. He was connected with the cathedral church and was known as the urban archpriest or the archpriest of the city. The spread of the Faith meant the enlargement of the diocese and naturally necessitated the appointment of assistants to function in the rural areas. These functionaries who presided over the parishes and priests in the rural districts were known as the rural archpriests.[33]

Many functions were reserved to the urban archpriest. As the *princeps sacerdotum* he ruled all priests having the care of souls. In the absence of the bishop he celebrated the solemn Mass or commanded it to be celebrated by another. Likewise, in the absence of the bishop, he blessed the font, anointed the sick, and solemnly reconciled penitents after

[30] X, I, 24, 1.

[31] X, I, 23, 7; Potthast, n. 5031. See also, *Glossa ordinaria*, ad X, V, 4, 1, s. v. *decani*.

[32] *Glossa ordinaria*, ad X, I, 24, 1, s. v. *subesse*: "Sic videtur quod maior est in ordine, subsit minori ... sed archidiaconus praeest archipresbytero quoad dignitatem, non quoad ordinem."

[33] The II Council of Tours (567), c. 19, speaks of the "*archipresbyteri*" and "*reliqui presbyteri et diaconi et subdiaconi vicani*," Mansi, IX, 797. Council of Rheims (630), c. 19: "... ut in parochiis nullus laicorum archipresbyter praeponatur: sed qui senior in ipsis esse debet, clericus ordinetur." Mansi, X, 597; XI Council of Toledo (675), c. 14: "Necessarium duximus instituere ut ubi temporis, vel loci, sive cleri copia suffragatur, habeat semper quisquis ille canens Deo vel sacrificans, post se vicini solaminis adiutorem: ut si aliquo casu ille qui officia impleturus accedit turbatus fuerit, vel ad terram elisus, a tergo semper habeat qui eius vicem exequatur intrepidus." Mansi, XI, 145. See also: X, I, 24, 4, and canon 8 of the Council of Nantes (IX cent.), Mansi, XVIII, 168.

first consulting the bishop.[34] He was obliged to see that no one died without previously being fortified with the sacraments of Penance and the Holy Eucharist. He also could hear the confessions of all the people of the diocese.[35]

On the other hand, the rural archpriest presided over the parochial churches of the country and the other priests having minor titles, assuming in their regard the position of an inspector. All those appointed under him were subject to his supervision; however, it was limited by the bishop, so that he frequently had to refer matters to the bishop.[36] The rural archpriests were able to settle minor affairs which did not require judicial intervention, but all matters of greater import were to be referred to the bishop and were subject to his jurisdiction.

In some localities the urban archpriest possessed a true *dignitas,* even though he was subject to the archdeacon. He had jurisdiction in the internal forum, but lacked jurisdiction in the external forum when the exercise of judicial power was required. Like the archdeacon he was the perpetual vicar of the bishop, and his position by that very fact possessed a certain measure of stability.

SECTION 3. THE PRIMICERIUS

Primicerius, as the term indicates, designated the first in the roster of a particular class of officials. In its ecclesiastical usage this name applied to the heads of the various colleges of notaries and judges who occupied an important place in the administration of the Roman church in later antiquity and in the Middle Ages. In reference to the notaries the *primicerius* was the one who by means of his signature witnessed first all official documents. In the decretal legislation, however, one finds that the term *primicerius* also designated

[34] X, I, 24, 2; JE, n. 1986.

[35] *Glossa ordinaria,* ad X, I, 24, 3, s. v. *a foria veniunt.* For further details of the urban archpriest's office see D. XXV, 1, and X, I, 24, 1, 2, 3.

[36] *Glossa ordinaria,* ad X, I, 24, 4, s. v. *referant.*

a *cantor,* whose duty it was to preside over the chant and the ones appointed for chanting, as well as a *scholasticus,* or the director of the clerical schools.[37]

Gradually other duties were assigned to him in reference to the minor clergy. In choir he took his place immediately after the archpriest, and therefore his office is treated immediately after that of the archpriest. The *primicerius* was the teacher of the deacons and the other minor clergy.[38] He carefully guarded the discipline among the minor clergy. He assumed this obligation in such a way that he bound himself in conscience to render an account for their souls before Almighty God. He assigned the lessons to the lectors, and instructed the clergy assigned to him in the performance of their choir offices. In addition to directing the liturgy, he pointed out the repairs to be made in the churches, directed the composition of the letter for the days of fasting, warned clerics whom he knew to be delinquent, and reported them to the bishop if they failed to amend.[39]

Technically the *primicerius* did not have an independent office as such, for he performed his duties under the supervision of the archdeacon, assisting him in the governance of the inferior clergy, since the archdeacon reserved to himself the care and governance of the major and minor clergy.[40]

The place which the *primicerius* occupied in the mediaeval schema of ecclesiastical offices was known as a *personatus.* In this position he enjoyed a certain preeminence over the canons, and a precedence in choir. If particular churches recognized this position as a *dignitas* or merely as a simple administrative position, this resulted from customary usage and not from the common law. One finds instances, however,

[37] Hostiensis (Henricus de Segusio), *Summa Aurea* (Venetiis, Ad Candentis Salamandrae Insigne, 1570), I, 25, 1.

[38] X, I, 25, 1.

[39] *Glossa ordinaria,* ad D. XXV, 1, s. v. *primicerius.*

[40] *Glossa ordinaria,* ad X, I, 25, c. un., s. v. *donet lectiones.*

wherein the *primicerius* was referred to as having a dignity, a *personatus,* as well as a simple administrative position.[41]

SECTION 4. THE TREASURER, SACRISTAN, AND CUSTODIAN

In the *Decretum Gratiani* as well as in the *Decretales Gregorii IX*[42] one finds legislation on various other offices which were to be established in cathedral churches, namely the offices of sacristan, treasurer, and custodian. The sacristan, also called the treasurer in certain churches, was that minister who was charged with the care of the sacred treasures of the Church, for example, the chalices, patens, candelabra, and other ecclesiastical utensils and vestments. The immediate care of these things pertained to the archdeacon, but the sacristan or treasurer shared in this trust of the archdeacon.[43]

The custodian was the quasi-minister of the sacristan. He, too, was subject to the archdeacon. His main duties were to care for the less precious utensils used in the divine services, and to prepare the bread and the wine and all other things necessary for the ministry of the altar.

From the nature of the work performed by these officials it is quite clear that they were engaged in merely administrative functions, and since they enjoyed neither jurisdiction nor preeminence, their position was technically referred to as an *officium.*[44]

SECTION 5. PERPETUAL AND TEMPORARY VICARS

With the passage of time the character and multiplicity of the work that devolved upon bishops and rectors of churches became increasingly burdensome. In fact, it was found that they were not always able personally to handle all the affairs which were entrusted to their care. These conditions gave rise in canonical history to the institute of vicarship with its

[41] X, I, 2, 8; Potthast, n. 2996.

[42] D. XXV, 1; X, I, 26, c. un.; X, I, 27, c. un.

[43] *Glossa ordinaria,* ad X, I, 26, c. un., s. v. *vasorum.*

[44] *Glossa ordinaria,* ad I, 4, 1, in VI, in principio.

concomitant delegation of authority. Those, therefore, who exercised power in the name of another were called vicars. In particular, a vicar was one who took another's place and supplied in his place if the one for whom he acted was absent, or impeded, had died, or was personally unable to perform his charge for any legitimate reason. Usually a vicar in the ecclesiastical sense was appointed to exercise jurisdiction or spiritual administration on behalf of others.[45]

Vicars normally consisted of various classes. There were those who were established as such by law, for example the archdeacon and the archpriest. Of the archdeacon it was said: "Ut archidiaconus post episcopum sciat se vicarium esse in omnibus, et omnem curam in clero . . . ad se pertinere."[46] In spiritual affairs the archpriest had a similar position under the bishop.[47] Therefore the law itself granted certain powers to the archdeacon and the archpriest, and this power was annexed to their offices without any intervention on the part of the bishop.

There were also vicars of jurisdiction and vicars of spiritual administration (*in divinis*). This division arose from the functions which these substitutes performed. In general, a vicar of jurisdiction was one to whom jurisdictional authority was entrusted by the Pope, by a bishop, or by a chapter. Vicars *in divinis*, on the other hand, ministered in divine worship, had the care of souls and exercised an office on behalf of another in the performance of the duties inherent in the sacred ministry. Depending upon the stability of their offices, these latter were subdivided into perpetual and temporary vicars. A perpetual vicar *in divinis* was defined: "Perpetuus vicarius dicitur qui canonice a persona ecclesiae et au-

[45] "Viso de iis qui serviunt ecclesiam nomine proprio, videndum est de iis qui serviunt nomine alieno. Et communiter in isto titulo tractatur de vicariis, qui serviunt in divinis: quamvis in capitulo penultimo tractetur de vicario iurisdictionis." *Glossa ordinaria*, ad X, I, 28, 1, in principio.

[46] X, I, 23, 1.

[47] X, I, 24, 1.

thoritate episcopi est institutus et certam debet percipere portionem." [48] A perpetual vicar had a permanent position and could be removed only for the causes expressed in law. A temporary vicar, on the other hand, could be removed at the will of the one appointing him.

Manifold duties, physical incapacity, and other similar causes justified the appointment of a vicar. In some cases the law demanded the appointment of a perpetual vicar. For example, if a monk obtained a parish belonging to seculars, a perpetual vicar had to be appointed, since in such a case monks could not administer the sacraments to their parishioners. This is evident from a decretal of Alexander III to the bishop of Norwich in England.[49] Whenever a filial church was erected a perpetual vicar had to be appointed.[50] In general, the causes requiring the appointment of a perpetual vicar could all be reduced to the necessity or advantage of the parish involved.[51]

Perpetual vicars held canonically established offices, and therefore could not be removed from their vicarship unless they did something which merited deprivation or deposition from the benefice. Alexander III declared that a perpetual vicar acquired a true title to a benefice.[52] The incumbent of a perpetual vicarship was understood to be beneficed: ". . . non enim beneficio carere debet dici, cui competenter de perpetuae vicariae proventibus est provisum." [53]

A temporary vicar was instituted only for a time. The law itself recognized certain legitimate causes for the appointment of such vicars. Whenever a church or a benefice had fallen vacant because of the death, the resignation, or the deprivation of its incumbent, a temporary vicar could be appointed

[48] *Glossa ordinaria*, ad X, I, 28, 1, s. v. *perpetuos vicarios*.

[49] X, I, 28, 1; JL, n. 14034.

[50] X, III, 48, 5; JL, n. 15750.

[51] X, I, 28, 1; JL, n. 14034.

[52] X, I, 28, 3; JL, n. 14156.

[53] X, I, 3, 27.

until provision for the rector was made.[54] Alexander III and Lucius III (1183-1184) recognized as causes for the appointment of temporary vicars the lack of required age on the part of the incumbent and the inability personally to administer the benefice because of sickness.[55] Another cause warranting the appointment of a temporary vicar was the fact that the principal rector of a church was not able personally to administer his benefice and needed the assistance of others.[56]

A temporary vicar appointed by the pastor or by the bishop acquired no right or title to the benefice to which he was appointed a vicar. Nevertheless, he was entrusted with the care of souls and other parochial functions in the name of the pastor who retained the complete charge of the church. The office of a temporary vicar ceased with the death, the resignation, or the deposition of the principal rector, and was also revocable at the will of the person appointing him. No strictly canonical cause was necessary for his removal.

Article 4. The Concept of An Ecclesiastical Office Deduced From Penal Legislation

Throughout the Decretals an appreciable amount of attention is paid to the punishment of delinquent clerics. This article will attempt to resolve the concept of an ecclesiastical office from this penal legislation.

Our previous study of the penal legislation in Gratian's *Decretum*[57] definitely showed an intimate connection between the concepts of *officium* and *sacer ordo*, so much so that when a particular canon spoke of a *suspensio ab officio* it necessarily meant that the delinquent cleric, as punishment for his crime, was to be forbidden to exercise the functions of the orders which he possessed. If occasionally orders were specifically mentioned in connection with the statement re-

[54] X, I, 31, 4; JL, n. 13822.

[55] X, I, 14, 2; JL, n. 13808; X, III, 6, 2; JL, n. 14965.

[56] C. XVI, q. 1, c. 48; JE, n. 1197.

[57] Heintschel, *op. cit.*, pp. 19-23, 51-53.

garding the extent of the punishment,[58] this restrictive statement was looked upon as affecting the office also, because of the close connection between office and orders.

Before the twelfth century, ordination was forbidden unless a cleric at the time of the reception of orders was destined for a determined ecclesiastical charge.[59] The reception of orders and the acceptance of an office were complementary aspects of the same thing, and therefore were considered as forming one act. In fact, one might say that the exercise of one's orders and the administration of one's office were, indeed, synonymous.

As time passed it became customary to confer not only tonsure and minor orders but also major orders without a title. Those so ordained were known as *clerici vagi* or *acephali*. To put an end to this practice the III General Council of the Lateran (1179) took a definite stand regarding the title of ordination:

> Episcopus, si aliquem sine certo titulo, de quo necessaria vitae percipiat, in diaconum vel presbyterum ordinaverit, tamdiu ei necessaria subministret, donec in aliqua ecclesia ei convenientia stipendia militiae clericalis assignet, nisi talis ordinatus de sua vel de paterna haereditate subsidium vitae possit habere.[60]

[58] For example: D. XXXII, 10; D. XXVIII, 9.

[59] Canon 6 of the Council of Chalcedon (451)—Mansi, VII, 345. There are many readings of this canon in which "*praedicetur*" is rendered "*designetur*" or "*pronuntietur*" which, according to some, would make the canon refer to the public announcement of the ordination in the Church. See Mansi, VI, 1226; VII, 362, 375. The version of it in the *Decretum Gratiani* (D. LXX, 1) unmistakably presents that meaning. However, the phrase "*absolute ordinantur*" which had a very definite meaning, namely, to be ordained without a title, i.e., without a place of employment and sustenance, is the key to the correct intrepretation, and, indeed, the Fathers of the Council of Trent understood the canon in the sense of clerical assignment (sess. XXIII, *de ref.*, c. 16).

[60] X, III, 5, 4: Mansi, XXII, 220. Innocent III extended this discipline to subdeacons: X, III, 5, 16; Potthast, n. 71.

The advent of this new legislation ushered in an entirely new concept of an ecclesiastical office. Whereas previously the powers inherent in holy orders and in the office were considered as one, they came to be viewed as separate and distinct entities, as a result in large measure of the evolving doctrine on jurisdiction, and on its inherence in the very concept of an office.[61] Consequently, clerics delinquent in the exercise of their duties and obligations were thenceforward to be punished, not exclusively with the suspension *ab officio,* but if circumstances warranted it, even with a suspension *ab ordine.*[62]

It should be remembered also that the twelfth century witnessed the final unfolding of the beneficiary system. The Church in keeping with this development added another penalty which extended to this canonical institute. The suspension *a beneficio* did not arise spontaneously; its growth was rather gradual, paralleling the growth of the concept of an ecclesiastical benefice. It has already been shown how, in the early centuries, clerics obtained revenues from their offices. It has also been shown how the delinquent possessor of an office was punished with a deprivation of his revenues and offerings. It was from this practice that the suspension *a beneficio* took its rise.

The twelfth century, therefore, ushered in an element of accuracy and clarity in reference to suspension which had theretofore been wanting. There was a uniform division of the effects of suspension according to a recognized and well-defined triple category. A comparative study of three penal

[61] This genesis began in the writings of the early Decretists. Prior to this there seems to have been no incisive canonical distinction between the jurisdictional and ministerial powers possessed by ecclesiastical officials. During the Middle Ages the normal exercise of jurisdiction within a diocese was reserved to the bishop and the archdeacon. The analysis of the facets of power exercised by these officials was instrumental in integrating jurisdictional authority as a part of the concept of an ecclesiastical office as the following article will show. See also Heintschel, *op. cit.*, pp. 10-15, 24-25, 40-53.

[62] In this regard see F. Kober, *Die Suspension der Kirchendiener* (Tübingen, Verlag der Buchandlung, 1862), pp. 23 ff.

canons of the III General Council of the Lateran (1179) bears this out:

> . . . Illos vero, qui sponte iuramentum de tenendo schismate praestiterint, a sacris ordinibus et dignitatibus decernimus manere suspensos.[63]
>
> Ideoque constituimus, quod usurarii manifesti nec ad communionem admittantur altaris, nec christianam (si in hoc peccato decesserint) accipiant sepulturam, sed nec oblationes eorum quisquam accipiat. Qui autem acceperit, vel Christianae tradiderit sepulturae, et ea quae acceperit, reddere compellatur, et, donec ad arbitrium episcopi sui satisfaciat, ab officii sui maneat executione suspensus.[64]
>
> . . . Clerici sane, si contra formam istam quemquam elegerint, et elegendi tunc potestate privatos, et ab ecclesiasticis beneficiis triennio noverint se suspensos . . .[65]

Needless to say, it is not to be expected that a well-defined demarcation between these various concepts will be found in all instances. Evolution of doctrine is a slow process, and so remnants of the older concept in which an office is identified with the exercise of the functions inherent in holy orders were still to be found. Truly suspension from office restricted the rights flowing from that office, whether or not these were founded on the ministerial or the jurisdictional powers inherent in it. It has been noted, in reference to the advent of absolute ordinations, that if a cleric had been suspended from orders, this also included the suspension from office, and vice versa.[66] Accordingly, if there was a suspension from office,

[63] X, V, 8, 1, which is canon 2 of the council—Mansi, XXII, 218. See also X, V, 3, 45, for a decretal of Gregory IX using this terminology; Potthast, n. 9671.

[64] X, V, 19, 3, which is canon 25 of the council—Mansi, XXII, 231. For other canons of this council using this terminology see: X, III, 1, 8 (canon 11); X, III, 35, 2 (canon 10); X, V, 4, 1 (canon 15). For the decretals of Alexander III see X, III, 2, 5 (JL, n. 13992); X, V, 3, 19 (JL, n. 14229); X, V, 3, 20, (JL, n. 13914).

[65] X, I, 6, 7, which is canon 3 of III Lateran—Mansi, XXII, 218. See also X, I, 6, 44 (canon 26, IV Lateran).

[66] Kober, *op. cit.*, p. 26.

this included also a suspension from orders.[67] Later, however, a cleric could be suspended from orders, and then the suspension affected only the orders, and not the office.[68]

It should also be remarked here that jurisdiction and orders came to be considered as separate powers. This is evident from a decretal ascribed to Celestine III (1191-1198).[69] The case had reference to an appeal made against a bishop who had suspended a cleric. This bishop, although lawfully constituted, had not received consecration. The appeal was based on this fact. In response the Pope maintained that, since the bishop had accepted his election, he could fully exercise his powers. As the glossator remarked: "Electus, confirmatus, non consecratus potest exercere quae sunt iurisdictionis, non autem ea quae sunt ordinis episcopalis." [70]

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[67] *Glossa ordinaria*, ad X, V, 3, 30, s. v. *secreto*.

[68] *Glossa ordinaria*, ad X, V, 3, 45, s. v. *per trienium*; X, V, 21, 2; X, V, 8, 1.

[69] X, I, 6, 15; JL, n. 16572. Loewenfeld noted that this was really a decretal of Clement III (1187-1191), although Compilatio I: I, 3, 7, and X, I, 6, 15, attributed it to Celestine (1191-1198).

[70] *Glossa ordinaria*, ad X, I, 6, 15, s. v. *transmissam*.

THE CESSION OF ADMINISTRATION AND THE DISPOSITION OF USE AND USUFRUCT

CANON 569—§ 1. Before profession of simple vows, whether temporary or perpetual, the novice must, for the whole time he will be bound by simple vows, cede the administration of his property to anyone of his choice and, unless his constitutions prescribe otherwise, freely dispose of its use and usufruct.

§ 2. If such cession and disposition was omitted for lack of property and if property is later acquired, or if it was made and other property is later acquired, under any title whatsoever, said cession and disposition should be made, or repeated, conformably to the norms laid down in § 1, notwithstanding the simple profession already made.

I. THE CESSION OF ADMINISTRATION

THE broad-minded canonical legislation of the Church has provided for many degrees in the observance of evangelical poverty. Religious communities practice this poverty in many ways, ranging from the absolute renunciation of the Mendicants to the minimum restrictions characterizing present-day secular institutes. But before there can be even any question of evangelical poverty, whether by public vow, social vow, promise, or any other manner of consecration, the absolute minimum required by the Church is the prohibition of the free use of one's property and the obligation to turn over to the Superior all the fruits of one's personal activity,[1] or at least the balance remaining after providing for one's personal and official needs.[2]

Because the solemn vow is no longer the only vow of poverty, as was the case until comparatively recent times, there is no longer any universal obligation of complete and *effective* despoilment prior to religious profession. But although the Church's final recognition of the simple vow of poverty, with

[1] As is the case with the religious making vows.

[2] This is the common practice in not a few secular institutes. It should be noted, however, that in some secular institutes the prescriptions on the observance of poverty are more severe than in some religious congregations.

the right of retaining ownership, was motivated by practical considerations flowing from the special circumstances of the religious life in Europe after the French Revolution,[3] nevertheless the ideal of *affective* despoilment, or *affective* detachment, has always remained unchanged.

Hence, concomitantly with the simple vow of poverty and the retention of ownership, the Church has imposed on simply professed religious the obligation of turning over to someone else the actual administration of property thus owned. Canon Law thus makes it very clear that, although the simply professed religious remains owner of property he possessed before profession, and is still free to acquire the ownership of whatever other property may come to him by a personal title, he is not thereby authorized to give to these holdings the same time and attention as was the case before making his vows. Even though his vows be only simple, and not directed ultimately to the making of solemn vows, his religious profession has wrought a marked change in his practical personal relationship with his property. Without prejudice to his right of ownership, he is, after his profession, to have as little as possible to do with his property. He is, in a word, to comport himself as though he actually had nothing at all. Should he acquire further property later on, he must empower someone to administer it also, just as he did for what he owned before making his first profession. It is thus made abundantly clear that, even as regards his own property—and, a fortiori, as regards the property of others—the business activities of the professed religious are to be reduced to an absolute minimum: ". . . and they that use this world, as though they used it not."[4]

[3] Because of the continually growing danger of the exspoliation of religious houses, the expulsion of religious, and the refusal of the civil law to recognize the effective renunciation demanded by the solemn vow of poverty, the Church recognized the *simple* vow which, by permitting the retention of naked ownership, obviated the danger that the religious might, in the circumstances listed above, be left in want and misery.

[4] I Cor. 7, 31.

This point is further stressed by canon 581, § 1. Here the Code establishes the right of simply professed religious both to retain ownership of property previously possessed and to acquire new property; But the canon adds immediately: ". . . without prejudice to the prescriptions of canon 569." The prescriptions in question deal precisely with the cession of administration and the disposition of income. Hence, in his commentary on the Code, Father Larraona, C.M.F., now Secretary of the Sacred Congregation of Religious, writes that this provision of the Code is a clear reminder to the religious of simple vows that " the ownership which is retained or acquired *must always remain separate from the administration, free use, and usufruct.*" [5]

Thus, the over-all aim of the cession of administration is *evangelical detachment* and *freedom from financial worry.* The cession of administration constitutes a stable disposition relieving the religious of constantly recurring anxiety over the administration of his property. For this same reason, Canon Law restricts the freedom of the religious to modify his earlier provisions for the handling of his property. By requiring the approval of the Superior General for changes in the cession of administration, Canon 580, § 3, again emphasizes the desire of the Church that the religious have as little as possible to do with the actual administration of what he may own.

In this way, notwithstanding the fact of his naked ownership, the Church wants the religious of simple vows to endeavor to capture the complete spirit of detachment and that practical lack of concern for worldly goods which are necessarily involved in the profession of the solemn vow of poverty. The *juridical* effects of the solemn vow differ from those of the simple vow. But both the solemn vow and the simple vow, although in different ways, aim at the *same spiritual ideal.*

[5] *Commentarium pro Religiosis,* vol. 2 (1921), p. 13.

According to the provisions of canon 569, the religious is free to entrust the administration of his property to anyone of his choice. Since the important consideration is to free himself from all worldly concern over business, the choice of the religious should naturally fall on someone experienced in business matters and administration. Otherwise, difficulties will be constantly cropping up and the necessity of frequent personal intervention by the religious will inevitably frustrate the whole purpose of the law.

A religious may cede the administration of his property to his congregation, his province, or his house, provided the competent Superior is willing to accept this responsibility. Superiors, as is clear, are free to stipulate certain conditions intended to diminish the administrative load which might otherwise result from handling a large number of small holdings or estates. Among such conditions, not a few Superiors are now placing *global administration* of all such property entrusted to them, with the prorating of gain and loss. Where such a condition is stipulated and accepted, and in cases where the property of the individual religious is to be administered conjointly with that of the congregation, province, or house, the religious should state explicitly that he agrees to the *commingling* of his own assets with those of the administrator.[6]

In order to give the cession of administration both legal and canonical binding force, the document of cession should be drawn up in legal form as a power of attorney, conferring

[6] It should be mentioned that global administration does not necessarily imply the commingling of the assets of the religious with those of the congregation, province, or house. An acceptable procedure is to set up a Declaration of Trust for the property of the individual religious, with a nominee agreement being entered into by a few religious, representing all the rest, and the officers of the administrating corporation. Securities can be held in the name of this nominee. This method keeps the funds thus administered separate from the assets of the congregation, etc. and also properly identifies dividend checks so that they can be credited to the Trust Fund Account. The religious executes an acceptance of trust, in order to authorize the administrators of the Trust Fund to act with full power in his name.

on the administrator the broadest possible powers, short of authority to dispose of the property according to his own whim and caprice.

There is no obligation to cede the administration of *future* property, no matter under what title it may eventually be expected, or no matter how certain is the fact of future ownership. The Code explicitly envisions two distinct cases, and states that the obligation of appointing an administrator becomes effective only when property is actually owned. It will be noted that the provision is different in Canon 569, § 3, which extends the obligation of making a last will and testament not only to property actually possessed but to whatever may subsequently be acquired.

The administrator's duties will be, in general, and only as examples, to supervise the rental of property and the investment of liquid assets, to collect rent or other fees, to clip coupons and dispose of them conformably to instructions previously received from the owner, to see to the maintenance and upkeep of buildings and, in a word, to handle whatever may be regarded as the *ordinary* administration of property. The administrator may never arrogate to himself powers which might ruin the property or interfere with the basic legal and canonical rights of the owner.[7] Still, as already remarked, his powers should be broad enough to make it unnecessary for him to have to consult the religious, except in unusual cases.

In the light of the purpose of the law, it follows that it is against both the letter and, especially, the spirit of the Code for a religious to retain in his possession personal passbooks for bank accounts, or check books. Should he share in a joint bank-account, he should give to the co-sharer full authority to handle the account, since he himself is supposed to rid himself of all concern for worldly things by getting them both out

[7] The *use* of property does not imply any right to destroy it or to do anything at all which would deprive the owner of his rights. Cf. Schaefer, *De Religiosis*, ed. 4, n. 923, 5.

of hand and out of mind. In the commentary previously cited, Father Larraona writes: "The administration of *any and all property* [8] must be turned over to someone else, nor is it lawful to retain such administration in any way, even for only part of the property, without permission from the Apostolic See, since this is absolutely prohibited by the common law of the Church." [9]

In those cases in which a novice would own no property at the time he makes his first vows, it would be advisable nonetheless, and merely as a matter of record, to have him make a written declaration to this effect, in order to forestall possible future difficulties.

II. The Disposition of Use and Usufruct

Canon 569 could easily give the impression that the terms "use" and "usufruct" apply to all property. Such a conclusion would be erroneous. For some types of property, only the term "use" will be applicable: e.g. the religious determines who will use an automobile which he may own. "Usufruct" enters into the picture only when property is income-producing. Thus, if a religious possesses only property which brings in no income, he will dispose of its *use*. If his property is a source of income, either in cash (dividends etc.) or in kind (the produce of a farm), he will dispose of the *usufruct*. Thus a really adequate translation of the sense of the first paragraph of canon 569 would speak of the "disposition of use and/or usufruct" or of the "disposition of use and, if the case so demands, also of the usufruct of his property."

The question arises: Would it be licit for a religious to dispose of the use of, say an automobile, in favor of himself? Generally speaking, such a disposition would violate the Church's strict legislation on the common life. If a religious has left the use of an automobile to his community and later is assigned to an employment where an automobile could be

[8] The Latin text uses the forceful terms: administratio bonorum *omnium quorumcumque*.

[9] *Commentarium pro Religiosis*, vol. 1 (1920), p. 338.

regarded as reasonably useful, the Superior would not be forbidden to permit him to use the auto for his work. The same would be true if the religious had turned over the use of the automobile to an outsider and then later, with the permission of his Superior General, had changed this arrangement in view of facilitating his work. In these cases, he would be using property which *is his own,* but not *as his own.* He would be using it just as he would use anything else put at his disposal by his Superior.

In addition to *use,* some property also involves *usufruct,* that is to say, it is a source of income. The use to which such income is to be put could easily become a source of anxiety for a religious. For this reason the Code requires that, if the novice possess property at the time of his first profession, he must then, *semel pro semper,* determine how the income accruing from this property is to be employed. If he had no property at the time of profession and subsequently acquires property, he makes this disposition of usufruct at the time he effectively becomes owner of the property.

Once again, as it did previously for the cession of administration, the Code indicates how great is the desire of the Church that the religious remain as aloof as possible from concern over his temporal goods. Once this disposition has been made and the religious has thus indicated how income from his holdings is to be used, he is to give the matter no further concern. Still, since it is impossible to foresee perfectly all possible eventualities, the Code provides for cases in which modifications would have to be made in the determination of the use of income. In order to emphasize the importance of the matter, the permission to make changes in the disposition of usufruct is reserved in principle to the Superior General. A further restriction is added, namely, that the permission of the Holy See is required for those cases in which the change in the destination of income affects a notable part of said income *and* is in favor of the religious congregation to which the religious belongs. In order to forestall all danger

of interested motives on the part of the Superior General, the Code deprives him of the authority to approve a modification in which his congregation is so directly and so definitely interested.

In connection with the disposition of the usufruct of property, an important consideration would seem to be in order. When the Code speaks of the *bona* of a religious, it is referring to what is technically known as *patrimonium.* This term has come down to us from the ancient *Jus romanum,* or law of the Roman Empire, and has the specific meaning of "family property" left by the father, or "paternal estate".[10]

Since the simple vow of poverty evolved in Europe and directly as the result of situations prevailing in Europe, it was only natural that legislation on it should have been colored by the European mentality, which attributes to the *patrimonium,* or family estate, much more importance than is common in the United States. Hence, canonical references to the "property" of a religious naturally seem to suppose that this property will have a certain importance. It can hardly be referring to small amounts which not even a fertile imagination could regard as a basis for future economic security. This would seem to be confirmed by canon 979, § 2, which determines what is required for a cleric who is advanced to Major Orders under the canonical title of patrimony.[11] Thus it seems logical not to extend the legislation of the Code on this point to amounts which are really insignificant as far as future financial security is concerned. In this connection Father Larraona remarks that "small amounts" can be regarded as those which really make no difference in the general financial status of the person involved.[12]

[10] Cf. Forcellini, *Lexicon totius Latinitatis,* under *patrimonium.*

[11] "This title must be really secure for the whole lifetime of the one ordained, and be really sufficient for his proper support, conformably to the norms laid down by the Ordinaries according to different needs and circumstances of time and place." Canon 979, § 2.

[12] Small amounts are those "...quibus positis vel sublatis, patrimonii status non immutatur, ita ut quis eadem ratione dives vel pauper dici valeat."

Thus *patrimony* is constituted by holdings in cash, real estate, investments, or other forms of assets, in sufficient quantity to provide a principal producing interest or some other form of income. In other words, patrimony is any form of capital which provides income assuring sustenance. Since, then, they will not ordinarily be invested as capital, insignificant sums will never be regarded as patrimony. For this reason, in order to have a concrete norm of action, many communities have adopted the principle that there will never be any question of patrimony unless a value of 250 dollars is involved. A smaller sum may, of course, be regarded as patrimony if the interested religious so wishes or if such is the explicit wish of the donor of something under a strictly personal title. The sum indicated is merely suggested as a practical working principle.[13]

Unless his constitutions restrict freedom in this regard, a religious may dispose of the income from his property according to his own free choice. An authentic declaration of the Pontifical Commission for the Interpretation of the Code [14] has stated that constitutions approved before the Code of Canon Law was promulgated retain their power to limit, or even to take away, the novice's freedom of choice, and may also determine for the religious the use to be made of income from property of which he is and remains the sole owner.[15]

[13] For this same reason, the prohibition of Canon 568 against novices disposing of their property during the novitiate does not seem applicable to the small sums which may remain to a novice from the amount provided for the expenses of the novitiate. Either the sum is too small to be regarded as "property" in the strict sense of the term, or it can be regarded as belonging in reality to the novice's parents, although intended for his own personal use. Disposing of such small amounts before profession would hardly expose the novice to the danger of finding himself penniless in the world should he leave religion, or to the danger of remaining in religion only out of fear of financial insecurity outside—which are the dangers which Canon 568 aims to obviate.

[14] October 16, 1919, *Acta Apostolicae Sedis*, XI (1919), p. 478.

[15] This is the case, for example, with article 220 of the constitutions of the Congregation of Holy Cross (approved in 1857, and again in 1950 after revision). This article obliges the religious to conform to the decision of his

The religious freely determines how his income is to be used, but the actual execution of his wishes is to be left in the hands of his administrator. Here again, the ideal of *effective detachment* enters into the picture and counsels the religious against having any more contact with his own financial administration than is absolutely necessary.

The freedom granted by the Code, however, does not imply that the religious may arrange to have the income from his property applied to his own personal advantage, e.g. for the purchase of books, defraying of travel expenses, etc. Should he do so, and provided he has the permission of his superior for such expenditures, he would not be infringing on the letter of his vow of poverty. But he would most certainly be running counter to the spirit of even the simple vow, and would be violating the prescriptions of Canon 594, § 1, on the *perfect observance of the common life.*

The only form of personal advantage in the use of income is in what is called "capitalization of interest," whereby the income from the property of a religious is simply incorporated into his already existing principal or capital. Because even this capitalization seems less conformable to the spirit of religious poverty and the genuine monastic tradition, it is forbidden by the constitutions of not a few religious congregations. In fact, the preliminary drafts of the Code of Canon Law contained a universal prohibition of all types of capitalization. This prohibition, however, was not embodied in the final text of the Code, although individual congregations were left free to adopt or reject it: ". . . . nisi constitutiones aliud ferant." [16]

Once again, the provisions of the Code are applicable only to property actually owned at the time of first profession, or

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provincial for the use of income from property acquired *after* first profession. There is no restriction on the novice's freedom to dispose of property owned prior to first profession.

[16] Cf. Larraona, De paupertate simplici, in *Commentarium pro Religiosis*, vol. 1 (1920), p. 338, n. 7.

to property acquired later on. No disposition of use or usufruct is required for property which is no more than a possibility in the future.

What of the religious who wishes to determine, not once and for all, but, let us say, annually, how the income from his property is to be used? Such procedure, it would seem, would comply with the strict letter of canon 569, § 1, i.e. the religious would really be determining that he will decide annually how his income is to be disposed of. But there would seem to be little doubt that such a provision would definitely clash with the *spirit* of the law.[17] When the Church enjoins upon religious to determine the use and usufruct of their property, each one conformably to the constitutions of his own congregation, her aim, as has already been pointed out more than once, is to free them from concern over worldly goods. To so arrange things that this concern will automatically recur at fixed times is hardly the proper way to carry out the decrees of the Church.

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[17] In No. ix of the decree *Sanctissimus* (June 12, 1858), Pope Pius IX laid down the law that, although retaining ownership of his property, the religious making profession of simple vows prior to solemn profession, was forbidden to administer this property and to distribute or use income deriving therefrom. This indicates in some way the mind of the Church, and was one of the reasons why Canon Law eventually imposed the obligation of the cession of administration and the free, or limited, disposition of use and usufruct on all religious making profession of simple vows.

MISSIONARY SOCIETIES WITHOUT VOWS AND TITLE OF ORDINATION

1. *VOCATIO CANONICA*

AS Christ did not call his disciples for their own benefit and did not ordain them priests for their own consolation, so the Church from the earliest times on did not ordain clerics merely for their own prestige but only for the good of the people and in view of the ministry in the Church, binding them thereby to her service and subjecting them to her hierarchical power. The Church alone judges about the need for priests and accordingly " calls " men to the clerical state and from her they receive their rights and duties proper to that state. The cleric is, therefore, bound to the sacred ministry by a special obligation, because the " *vocatio canonica* " is made to him, i.e. he is called by the Church solely in order to exercise a certain power of Orders, of jurisdiction or of administration. By this very fact he is subject to the hierarchical power of the Church; if he is a secular priest he is directly subject to the ecclesiastical superior, if he is a religious he has bound himself by his vow of obedience to the Order, i.e. to the religious superior, and he is primarily subject to him.

2. *TITULUS ORDINATIONIS*

But if the bishop calls him (*vocatio canonica*), he must also entrust the exercise of a certain power of Orders or of jurisdiction to him (*missio canonica*), i.e. he must give him work on account of which the cleric will acquire a claim to maintenance. No man can legitimately be called to be ordained if the bishop is not satisfied that the candidate is provided with a stable source of income sufficient for his own maintenance, i.e. there must be a title of ordination. (can. 979 § 1)

Originally this maintenance of the clerics was secured from the common fund donated by the Christians of the Church. In the course of time, however, with the division and distribution of that common fund, the clerics began to be supported by the fund (land, possessions, money) of the particular church to which they were assigned. This was called their "benefice", and no cleric was allowed to be ordained without being attached to a definite benefice, to which he had a claim or title for his maintenance. Thus the "*titulus ordinationis*" was from the very beginning a recognised prerequisite for ordination. To safeguard the dignity of the clerical state, the Church forbade the so-called 'absolute ordination', that is, the ordination of a cleric who is not attached to a certain church or chapel or monastery, which he has to serve from the very moment that he is admitted to the clerical ranks and which is responsible for his support. Such a prohibition was passed by the Council of Chalcedon in 451.[1] It seems that this ancient law was not strictly adhered to in the Middle Ages. In the Second Lateran Council in 1179, Pope Alexander tried to stop the abuse of having men ordained deacons or priests who were not attached to any church, but wandered from place to place.[2] Finally the Council of Trent decreed that from then onwards no secular cleric, although otherwise quite suitable, was allowed to be promoted to major orders without being in the peaceful possession of an ecclesiastical benefice. As second best the Council allowed for the "*titulus patrimonii et pensionis*", but under two conditions: the bishop had to judge those, who had such "*tituli*", to be necessary or useful for his churches, and secondly he had to ascertain that the patrimony or pension was sufficient for their sustenance.[3] The Code of Canon Law enforces the same obligation by ordaining that "no cleric be promoted to

[1] *Decr. Gratiani*, c. 1, Dist. 70.

[2] *Decretales Gregorii IX*, C. 4, *De praebendis*, lib. III, 5.

[3] Sess. XXI, *De Ref.*, C. 2.

major orders unless provision is made for his honest maintenance through a canonical title" (can. 974 § 1).

For secular priests the canonical titles are: a benefice, or if this be lacking, the title of patrimony or the title of subsidy (*pensio*) (Can. 979 § 1). It is worth noticing that the Code has broadened the meaning of benefice as described in can. 1410, "a stable and sufficient endowment. . .", in order to make it applicable to mission circumstances. For that reason its meaning is extended in can. 1415 § 3 as including also: "if one can prudently foresee that the necessary revenues will be obtained from other sources", e.g. gifts from friends and benefactors, thus establishing that though before the Code "*dos in re*" was demanded for a benefice, since the Code "*dos in spe*" is sufficient.[4]

3. *MISSIONARIES WITH A MONASTIC TITLE*

Up to the establishment of the Sacred Congregation of the Propagation of the Faith in 1622, missionary work was practically exclusively done by monks. New monasteries were being established in recently conquered countries and more by their example and labour than by ecclesiastical ministration did the monks evangelize. Their rules made no provision for mission work and when, after the discoveries of the new world, monks singly or in groups left their monasteries to make new foundations and to undertake mission work, they received the necessary faculties of jurisdiction, etc., by a "*missio canonica*" from the bishop of the territory where they established themselves. The vow of obedience to their religious superior did not send them out to the mission territory, for mission work was beyond the scope of monastic discipline and was not taken account of in the rules, but they undertook mission work "*sponte sua*" albeit with the permission of their superiors. They had been ordained "*titulo paupertatis*" and this very title guaranteed for them the necessary maintenance during and after their mission career.

[4] Cf. *Het Missiewerk*, 1951, p. 32.

With the establishment of more Orders and Congregations, such as the Mendicant Orders and the Jesuits, the same held good for their members. But being religious and members of old Orders, they all shared in the great privilege of exemption from episcopal jurisdiction in several matters, besides enjoying many special privileges and faculties which their own superiors could grant them. When in 1622 the *S.C. de Prop. Fide* was established these exemptions and privileges could not all be taken away at once from the Orders. They persisted and though exercised by the religious missionaries with the best intentions in the world, they caused many a headache to the mission bishops and prevented a uniform code of jurisdiction and faculties from being put into effect by this newly established central organ for missionary activity. No wonder that *Propaganda* began to look out for another source of manpower for the missions, which would be more directly dependent upon this Congregation and more completely at the disposal and command of *Propaganda.*

4. *SECULAR PRIEST MISSIONARIES AND "TITULUS MISSIONIS"*

For this purpose it was decided to establish seminaries for the Foreign Missions, similar to those already established for European countries such as England and Germany, where secular clergy would be trained specifically for the Foreign Missions only and directly dependent upon the Sacred Congregation of Propaganda. The first seminary of this kind was the *Collegium Urbanum,* erected by Urban VIII in 1627 in Rome. The missionaries trained in this and similar seminaries and institutes were and remained secular priests who by a special promise bound themselves to give themselves exclusively and forever to mission work. The first Institute or organization of secular priests who pledged themselves to the mission work was founded in 1638 in Paris by Rev. P. Pallu, later Vicar Apostolic of Tonkin, and Rev. Lambert de la Motte, later Vicar Apostolic of Cochin China. The Institute

is known as *Societas Parisiensis Missionum ad exteras gentes* (*Société des Mission Étrangères de Paris*) and was canonically erected and approved of in 1663. This was the first time in the history of the Church that an institute of secular priests with a purely missionary purpose excluding every other kind of work, was founded with a view to providing not religious but seculars as missionaries. The candidates of these exclusively missionary institutes (*Seminarium Urbanum* and the Paris Institute), since they did not belong to a religious Order or to a diocese, could not be ordained with any of the titles which had so far been available and sufficient, namely of poverty or of a benefice. The S.C. of *Propaganda* demanded, therefore, that they should promise under oath perpetual service to the missions, and on the strength of this oath of perseverance allowed them to be ordained without any of the acknowledged titles for ordination being available but merely in view of their dedication by oath to perpetual service of the mission. This came to be known as the "*titulus missionis*", since the Council of Trent [5] had strictly forbidden to admit anyone to ordination without a title of sustenance. A title had therefore to be found also for those secular priests who volunteered to forego a title of a benefice or pension in Europe and offered to go to mission countries where there were no benefices or no chance of pensions. For that reason *Propaganda* introduced the "*titulus missionis*" and thus it became possible to ordain those secular priests who on account of the poverty of the missions or on account of other circumstances and difficulties of time and place could not otherwise have been ordained. To prevent ordained ministers having to beg for their livelihood, to the discredit of their priesthood sufficient and lasting provision is guaranteed by this title for the missionaries who by an oath have bound themselves to serve the mission in perpetuity. Already Gregory XIII in 1579 allowed the candidates of the then newly erected English College in Rome, by the Bull "*Quon-*

[5] Sess. XXI, *De Ref.*, C. 2.

iam divinae bonitati" of 1 May 1579, to be ordained *"sine aliquo beneficii vel patrimonii titulo et absque suorum Ordinariorum litteris dimissorialibus"*. The same faculty was in 1588 extended to the pontifical German College. In 1622 all the Pontifical Colleges were placed under the jurisdiction of the newly erected Sacred Congregation of the Propagation of the Faith. In 1638 Urban VIII granted to all the *"alumni S.C.P.F."* as the students of the Pontifical Colleges were then called, the privilege of being promoted to major orders *"etiam absque titulo beneficii ecclesiastici aut patrimonii sed ad titulum tantum missionis"*.[6] In 1871 *Propaganda* issued a general, hence meant for the missions inside as well as outside Europe, Instruction with the intention of putting an end to the various difficulties and problems concerning the *"titulus missionis"* which had given occasion to some disputes and abuses. It laid down: "The Ordinary may ordain clerics *"titulo missionis"* only with a special indult of the Holy See. This indult is usually given for a certain time or for a certain number of cases, to the Superior of the Missions or of the Colleges and Congregations that serve the Missions. The *"titulus missionis"* is therefore a *"titulus extraordinarius"* and it is only meant to meet extraordinary circumstances".[7]

This held good up to 1918 when the *"titulus missionis"* was incorporated in the Code and thus became from *"titulus extraordinarius"* a *"titulus communis"*. Canon 981 places the *"titulus missionis"* on the same level as the *"titulus servitii diocesis"*. It still remains, as it originally was, peculiar to the territories subject to jurisdiction of the S.C. of *Propaganda,* whether in these territories dioceses and a complete hierarchy have been established or not. This is clear from can. 981 where a distinction is made, not between dioceses and non-dioceses, but between territories subject to

[6] Brief of Urban VIII, 18 May 1638, *"Ad uberes fructus"*; cf. Paventi, *De Iuramento ac Titulo Missionis*, p. 32.

[7] *Coll.*, n. 1369.

Propaganda, whether there be dioceses in them or not, and the territories where the common law obtains.

5. *MISSION OATH*

A candidate ordained with this title of the mission must take an oath that he will devote his entire life to the service of the mission (can. 981 § 1). Originally it was prescribed only to students of Pontifical Colleges and the Paris Institute, and it still primarily concerns those trained in the Pontifical Colleges of *Propaganda* in Rome as well as outside Rome but also all those trained in seminaries in mission territories subject to *Propaganda.* Although substantially still the same,[8] the form of the oath has in the course of time undergone various changes but the two main factors have always been preserved in it, namely promise of perpetual service to the mission and forfeiture of the right to enter any religious Order or organisation. This we find still in the form prescribed by *Propaganda* in 1871: [9] "Not only the students of the Pontifical Colleges, but from now on all those that desire to be ordained "*titulo missionis*" have to promise by oath that they will devote their whole lives to the work on the missions and will not enter any religious Order without the permission of the Holy See". This promise not to enter religion nor to be professed in it is not expressly mentioned in can. 981 of the Code, which permits ordination "*titulo missionis*"—"provided that the candidate shall promise under oath to serve the mission for ever under the jurisdiction of the local Ordinary". But although in this canon not a word is mentioned prohibiting a candidate who has been ordained "*titulo missionis*" to enter a religious Order, Congregation or Society, still there is can. 542, 1° according to which, "clerics who, by the law of the Holy See, are bound by oath to devote themselves to the service of their diocese or the

[8] *Coll.*, n. 142.

[9] *Coll.*, n. 1369.

missions, cannot validly be admitted to the noviciate." [10] It is disputed among authors whether this applies to missionaries who are bound by the mission oath. Vermeersch, Vidal, Toso, Fanfani, Ferreres, Cocchi, etc., maintain that those bound by mission oath can validly enter religion; Paventi, Blat, Schäfer, Creusen, etc., deny it.[11] The Constitutions of Mill Hill Society say about this in n. 269: "No member of the Society may enter a Religious Order, Congregation, or Society without the special permission of the *S.C. Prop. Fidei.*"

6. *INCARDINATION AND MISSIONARY SOCIETIES*

The Paris Foreign Missions Society was established in 1638 with the idea of enabling secular priests to devote themselves to the ministry of the gospel without being bound by the special rules of a religious Order or Congregation. For that purpose candidates were accepted, who, although they were ordained "*titulo missionis*", remained incardinated in the diocese of their domicile or origin. Many more similar institutes of secular priests who bind themselves to devote their lives to the missions have been formed in the course of the years. They are institutes of secular priests living in common without vows, who consider the institute merely as a means towards an end, which is the mission, and not as a state of perfection in itself, i.e. not as an end, and they are governed by canons 673-681. These Societies are divided like religious institutes into clerical and lay, papal or diocesan (can. 673 § 2). All members of such Societies are bound by the obligations common to clerics, also by those common to religious in so far as these are laid down in canons 595-612, unless their Constitutions declare otherwise, and finally by the obligations laid down in their own Constitutions (can. 679). All members of these Societies, both clerical and lay, enjoy the privileges of clerics (cans. 119-123), as well as other privileges granted to

[10] *Cf.* cc. 555, 572, 3°.

[11] Cf. Pav. *o.c.*, p. 81.

the Society directly; they do not, however, enjoy the privileges of the religious, except by special indult (can. 680).

By the oath to serve the missions a person is not excardinated from his diocese, but strictly according to the law of the Code he remains incardinated in his diocese of domicile. The juridical effects of the incardination are so to speak suspended by an intervention of the supreme power of the Holy See, which effects, however, come into force again as soon as the suspension ceases or when the candidate is dispensed from his oath.[12] So it always was for those ordained "*titulo missionis*" after pronouncing their mission oath. The candidates did not belong to any religious Order but were truly and properly secular priests, belonging to a definite diocese, but with the permission of their bishops they devoted their lives to the mission. The reason why they were ordained was not "*servitii diocesis*" but "*titulo missionis*", all the while remaining incardinated in the diocese of origin or domicile, which therefore remained responsible for their maintenance if for one or other reason they would leave their mission. This consideration and responsibility moved several bishops to refuse "*litterae dimissoriales*" to candidates of Mission Societies of secular priests, thus preventing their ordination as members of the Society. Worried by this problem the Superior General of the Society of African Missions (S.M.A.) requested the S.C. of *Propaganda* for the faculty *to issue dimissorial letters* to his own candidates. This was granted by rescript of 31 July 1899 to him and thereupon also to other Missionary Societies.[13] By virtue of this faculty the Superior General can present candidates for ordination by issuing dimissorial letters on their behalf after they have made the perpetual oath. In this way the admission to ordination "*titulo missionis*" was no longer dependent upon the consent of the bishop of their diocese and in a certain sense Societies without vows were thereby placed on the same line as exempt

[12] Cf. Miranda, *De Titulo Missionis*, p. 109.

[13] Cf. Paventi, *o.c.*, p. 108.

religious,[14] in that these also can grant dimissorial letters to candidates for major orders after they have made profession of perpetual vows (can. 964). But although the fact of admission to ordination was now no longer dependent upon the bishop, the candidates of Societies were still not excardinated from their dioceses. To achieve this, a further step had to be taken. And just as religious are incardinated in the Order or Congregation and excardinated from their dioceses by the profession of perpetual vows, so the Holy See decided to attach the same legal effect to the "missionary oath" when taken by members of Missionary Societies without vows, at the same time changing the title of ordination from "*titulus missionis*" into "*titulus mensae communis*", the same title namely with which members of religious Congregations are ordained (cf. Can. 982 § 2). This step has been taken by the S.C. of *Propaganda* for various missionary Societies without vows,[15] for the Mill Hill Society by Rescript of S.C.P.F. of 25 Jan. 1935, which was further explained by Rescript of 25 May 1937 in the following words: "*Cum iuramentum aggregationis isti Societati clare habeat vim canonicae incardinationis, necessario sequitur sodales, potius quam titulo missionis, ad SS. Ordines promovendos esse titulo mensae communis. Huiusmodi autem titulus nullam mutationem inducit quoad naturam istius Societatis, quae non est Congregatio religiosa*" (Prot. 997/37). By this change of title of ordination and by the effect of incardination given to the mission oath Missionary Societies are not withdrawn from the jurisdiction of *Propaganda*, however much they may now resemble religious Congregations, as we learn from an answer of the S. Consistorial Congregation on March 15 1910, which is confirmed in the Code by can. 252, which says: "Societies

[14] Cf. Moeder, *The Proper Bishop for Ordination*, p. 102.

[15] Cf. Const. of the Society of African Missions, art. 22; of Maryknoll, art. 6, and Letter from S.C.P.F. 30 maii 1932; White Fathers, art. 194; of Sem. of Burgos, art. 25; of the Bethlehem Fathers of Switzerland, art. 9, § 4; of the Society of St. Columban, art. 11; of the Sem. of Scarboro, art. 16; of the Soc. of Quebec, art. 96, 105, 128.

and Seminaries founded exclusively for the training of missionaries are under the jurisdiction of the Propaganda Congregation."

7. *MISSIONARY SOCIETIES WITHOUT VOWS*

The following is an exhaustive list of missionary Societies without vows exclusively devoted to mission work and dependent upon the Sacred Congregation of *Propaganda.*

(1) *Societas Parisiensis missionum ad exteras gentes—Société des Missions Étrangères de Paris*—(M.E.P.), founded in Paris in 1638 by Mgrs. Pallu and Lambert de la Motte.

(2) *Pontificium Institutum pro Missionibus ad exteros*—The Milan Missionary Institute—(P.I.M.E.), which resulted from a fusion in 1926 by Pope Pius XI of the Pontifical Institute of SS. Peter and Paul (1874) and that of SS. Ambrose and Charles (1850).

(3) *Societas Lugdunensis pro Missionibus ad Afros—Société des Missions Africains de Lyon*—(S.M.A.), founded in Lyons in 1856 by Mgr. Melchior de Marion-Brésillac.

(4) *Societas Missionariorum Sancti Josephi de Mill Hill,* London—St. Joseph's Society for Foreign Missions of Mill Hill—(M.H.F.), founded in 1866 in Mill Hill by Cardinal Vaughan.

(5) *Societas Missionariorum Africae—Société des Missions d'Afrique*—(W.F.), founded in 1868 by Cardinal Lavigerie in Algiers.

(6) *Societas Missionum Exterarum de Bethlehem in Helvetia*—The Bethlehem Fathers—(S.M.B.), founded in Immensee in Switzerland in 1896.

(7) *Societas Burgensis pro Missionibus Exteris*—Mission Society of Burgos—(M.E.B.), founded in Burgos, Spain, in 1899 by Fr. Gerardo Villota.

(8) *Societas de Maryknoll pro Missionibus Exteris*—Catholic Foreign Mission Society of America—(M.M.), founded in America by Fr. J. Walsh in 1911.

(9) *Societas Sancti Columbani pro Missionibus apud Sinenses*—The Maynooth Mission to China—(M.S.Col.), founded by vote of the Irish Bishops in Maynooth, Ireland, 1917.

(10) *Societas de Scarboro Bluffs pro Missionibus Exteris,* Canada—The Mission Society of Scarboro—(M.E.S.B.), founded in 1918 by Mgr. J. Fraser in Canada.

(11) *Societas pro Missionibus Exteris Provinciae Quebecensis,* Canada—*Société des Missions Étrangères de la Province de Québec*—(M.E.Q.), founded by the bishops of the ecclesiastical Province of Quebec in 1921.

(12) *Societas Sancti Patritii pro Missionibus ad exteros,* Kiltegan, Ireland—Kiltegan Fathers—founded in 1932 by Fr. Whitney in Kiltegan, Ireland.

(13) *Seminarium de Yarumal pro Missionibus Exteris,* founded in Columbia in 1939.

(14) *Societas Missionariorum Indigenorum Sti Petri et Pauli,* founded in Benares, India in 1945.

(15) *Instituto de Santa Maria de Guadalupe para las Misiones Extranjeras*—(M.deG.), founded in 1947 by the bishops of Mexico and approved by *Propaganda* 28 April 1954.

All these Societies agree in this respect that the members do not take vows and hence are not religious in the canonical sense, but they are secular priests who under the authority of the *S.C. de Propaganda Fide* devote themselves to mission work to which they bind themselves by an oath of perseverance and stability. In some institutes the members promise under oath, primarily to persevere in the institute, e.g. The Lyons African Missions Soc. Const. 1932, art. 14, "... *Spondeo et juro quod in ista Societate permanebo . . . quod in omnem regionem et locum quo Superior generalis me miserit sine mora proficiscar*". The same in M.S.Col., and Soc. of St. Patrick.

In other Institutes the members promise to persevere in the work undertaken by the Institute, and obedience to the Superior General, e.g. M.H.F. 1937, *in fine*: "... *spondeo ac*

iuro me operi Missionum huic Societati commissarum vel in posterum committendarum, consecraturum esse, atque oboedientiam Superiori Generali secundum Societatis Constitutiones praestaturum esse. Ita me Deus. . ." The same for P.I.M.E.

The form of oath of the Maryknoll Fathers is slightly different in that not merely obedience is promised to the Superior General of the Society but also to the ecclesiastical superior of the mission where they labour. E.g. Maryknoll, 1930, art. 14, ". . . promise and swear that I will consecrate my whole life to the work of the Missions committed, or to be committed in future, to this Society and that I will observe the Constitutions of the Society, and obey my legitimate Superiors. So help me God. . . ".

The White Fathers and the Quebec Missionaries promise under oath to consecrate themselves to the work of the missions with the added qualification however: "according to the Constitutions of the Society". E.g. W.F. 1921, art. 194 (and the very same in Const. of M.E.Q., 1929, art. 104), ". . . *moi N.N. fais serment sur les Saints Evangiles de me consacrer à l'Oeuvre des Missions d'Afrique, selon les Constitutions de la Société des Missionaires, ... En conséquence, je promets et jure au Supérieur de la dite Société soumission et Obéissance pour tout ce qui concerne la pratique du zèle apostolique et de la vie commune, selon les mêmes Constitutions*".

These small differences are the '*raison d'être*' for the existence of different Societies, providing a possibility of realizing the mission ideal according to the tastes and inclinations of different characters and nationalities.

8. *MEANING OF THE OATH AS DISTINCT FROM THE VOW OF OBEDIENCE*

But missionary Societies have this in common that the members bind themselves to the service of the Missions and for this primary purpose they promise obedience to their Su-

periors. The bond of authority and obedience in these Societies is not founded in the sacrifice of one's own will to the honour of God but in the service to be rendered for the propagation of the faith.

The member of a religious Order or Congregation who by his vow of obedience makes the sacrifice of his will to God, places himself in the hands of his Superiors and is bound to obey him whatever he commands in accordance with the rules, whether it is mission work or other work. A member of a Missionary Society, on the other hand, wishes and by his oath binds himself to the service of the mission and his obedience to the Superior is conditioned and qualified by this primary object. For that purpose God called him and for that reason he entered the Missionary Society as distinct from any other Society or Institute, and the Constitutions impose upon the Superior General and his Council the duty of implementing this purpose.[16]

It may be noted also that the great Orders have undertaken mission work and have established colleges for that purpose; the Franciscans were the first, followed by the Dominicans, Jesuits and Carmelites. There are, moreover, *Religious Congregations* with simple vows, which are purely missionary Congregations and depend upon *Propaganda.* They are:

(1) *Congregatio Immaculati Cordis Beatae Mariae Virginis* (Scheut);
(2) *Societas Verbi Divini* (Steyl)
(3) *Congregatio Filiorum Sacri Cordis Jesu* (Verona)
(4) *Pia Societas Sancti Francisci Xaverii pro Exteris Missionibus* (Parma)
(5) *Missionarii filii Sacri Cordis Jesu* (Württemberg)
(6) *Institutum Missionum a Maria Consolata* (Turin)
(7) *Societas Sancti Francisci Xaverii* (Goa, India)

[16] Cf. Const. of M.H.F., n. 140; P.I.M.E., n. 172; S.M.B., n. 70; M.M., n. 169.

9. *THE YEAR OF FORMATION BEFORE THE OATH*

Just as the noviciate must precede the taking of vows in religious Orders and Congregations, so the Societies without vows have introduced a year of probation or formation, which of course is not the canonical year of noviciate prescribed in the Code in can. 555, but merely a preparatory year prescribed by their Constitutions.

(1) The Constitutions of the Paris Foreign Missions Society do not prescribe a year of formation, but they prescribe that the new candidate either before or after the reception of subdiaconate has to undergo a serious test of probation for one year. (Art. 100 and 103.) For lay brothers a trial period of two years is prescribed. (Art. 13.)

(2) The Society for the African Missions of Lyons allows for two years of probation, the first year of 12 months, the second of 10 months, to be made during the course of philosophical or theological studies together with the other students, but under the direction of a priest especially appointed for this purpose. (Art. 14-17.)

(3) The Constitutions of the Maryknoll Missionaries prescribe a probation year distinct from and in addition to the scholastic courses and it shall begin after the second year of philosophy. (Art. 147-166.)

(4) The Constitutions of St. Joseph's Society of Mill Hill prescribe one year of probation to be made during the first year of theology. (Art. 135-138.)

(5) The Constitutions of the Society of Burgos prescribe a probation year to be made after the candidates have reached the 15th year. Nothing else is prescribed. (Art. 23.)

(6) The Constitutions of the Society of Bethlehem prescribe one year of probation distinct from and in addition to the scholastic course. (Art. 24-41.)

(7) The Constitutions of the Columban Fathers simply prescribe a full year's probation to be made immediately

after the admission of the candidate to the Society. (Art. 9 and 11.)

(8) The Constitutions of the White Fathers prescribe a postulancy for all candidates in the Apostolic Schools during the *humaniora* and philosophical course. (Art. 138-145.) After the imposition of the habit they thereupon have to make a noviciate of two years of which the first is to be passed in the house of the noviciate and this is for validity of the oath; the second year can be passed in any other house of the Society. (Art. 147-177.) After the two years noviciate the theological course is to be made in one or other scholasticate. (Art. 178-180.) According to their Constitutions therefore the studies must be interrupted for the making of the noviciate.

(9) The Constitution of the Scarboro Bluffs Society demands one year of formation which can be completed on the mission. (Art. 12.)

(10) The Constitutions of the Quebec Society prescribe one year of formation to be made in one particular house. (Art. 109.)

The year of probation has for its object the formation of the subjects by special prayers, instruction and guidance in view of their missionary vocation. In practice it will amount to a more exact observance of the internal discipline of the house and to a more intense application to the formation of character and acquisition of virtues under the guidance of an experienced director or confessor. The different practices of either letting the year of formation (spiritual year, noviciate) run simultaneously with the higher studies, or of setting aside one year specially for this purpose, distinct from the scholastic curriculum, indicate that the same results are expected from both. In religious Orders and Congregations the noviciate is aimed at testing the vocation of the subject by trying out his steadiness and regularity in the fulfilment of the duties of the religious state. Slowly he is introduced into and is accustomed to the practices, duties and offices of the

religious state. By practising the duties and offices, he learns the difficulties to be overcome and he has an actual chance to practise his strength of character in overcoming them.

It is different for candidates of missionary Societies. They cannot be subjected to the actual difficulties of the missionary life, they cannot go to the missions for a test in order to find out how they will stand up to the difficulties of the apostolate. The noviciate gives the *religious* theory and practice of the actual religious life for which the candidates are formed; the 'year of probation' gives the theory but lacks the practice of the actual life for which the missionary candidates are formed. It is a remote preparation by trying to acquire the necessary virtues and character dispositions demanded of a missionary and by giving the Superiors an occasion to judge about the suitability of the candidate for the missionary career. This is a most useful fruit drawn from this imitation of the noviciate.

10. *THE TEMPORARY OATH*

It is in the same spirit of imitation and with an eye for the same fruits as are drawn by candidates and Superiors from the temporary vows, that the temporary oath is introduced in the formation period of Societies, without however the same '*raison d'être*'. The main purpose of the temporary oath is to give the Superiors an occasion to observe the qualities of the future members after the period of formation and, if they do not give full satisfaction, to refuse them the final step of taking the perpetual oath.

(1) S.M.A. apparently take at once the perpetual oath after a probation of two years. (Art. 19, 20.) The lay brothers take a temporary oath first for two years, then for four, and finally the perpetual oath.

(2) M.M.: temporary oath after the year of probation, renewed every year for three or at least two successive years and finally the perpetual oath.

(3) M.H.F.: temporary oath at the end of first year theology; perpetual oath at the end of third year theology but before the tonsure. (Art. 135-137.) In particular cases the Superior General and his Council can determine the period of probation and thereupon admit the candidate to the temporary oath or at once to the perpetual oath. (Art. 138.)

(4) Sem. of Burgos: for two triennia the temporary oath is taken from the age of 15 till 21, then the perpetual oath. (Art. 23.)

(5) M.E.P. (Paris For. Miss.) do not have a true oath but only a promise, a "*bon propos*" at the time of departure for the mission. (Art. 113.) [17]

(6) Bethlehem Society: temporary oath for two years after the year of probation, then up to the diaconate again a temporary oath, after that a perpetual oath. (Art. 45.)

(7) Columban Fathers: temporary oath for three years which at the discretion of the Superior General can be extended for another three years. After that the perpetual oath. (Art. n. 11.)

(8) W.F.: after two years noviciate, those who are already ordained are at once admitted to perpetual oath; the others take perpetual oath before subdiaconate. (Art. 182.)

(9) Scarboro Society: after the year of probation the candidates take the temporary oath for seven years, after which they take the perpetual oath. (Art. 16.)

(10) Quebec Society: temporary oath for three years immediately after the year of probation, thereupon perpetual oath. (Art. 95-96.)

11. *IURAMENTUM MISSIONIS OR PERPETUAL OATH*

By the oath of perpetual service of the missions the secular students in the Pontifical Propaganda Colleges acquired the title with which they could be legitimately ordained, namely the "*titulus missionis*". The Cardinal Protector issued dim-

[17] Cf. Paventi, *o.c.* footnote on pp. 109-110.

issorial letters on their behalf to the bishop who was going to ordain them.

Similarly at present the candidates in Missionary Societies take the perpetual oath of service to the mission. This perpetual oath has according to the recent practice of the *S.C. de Propaganda Fide* the same effect as perpetual vows have in religious Institutes, namely to excardinate the subject from his diocese and to incardinate him in the Society (Cans. 585 & 115). His maintenance thereby being secured, the Holy See allows him to be ordained "*titulo mensae communis*" by the bishop to whom the Superior General issued dimissorial letters on his behalf. These dimissorial letters for major orders can never be issued for a member who has not yet taken his perpetual oath (can. 964). The Superior General could, however, issue dimissorial letters for tonsure and minor orders to members who have only made the temporary oath (can. 964, 3°),[18] because a candidate who during the period of temporary oath has received the tonsure and minor orders, or who had been thus promoted before he was admitted as a candidate of the Society, does not lose his diocese of domicile thereby and remains incardinated there (can. 111, § 2) and by dismissal is reduced to the rank of layman with the domicile in his diocese unimpaired (can. 648).

On the other hand can. 542 which forbids admission into a religious family of an ex-seminarian or of a person who has belonged by any title to a religious family, does not apply to Societies without vows.[19] In this canon the term "religious family" must be taken in the strict sense and does not apply to Societies without vows. Therefore a person who has belonged to a Society can without further ado enter a religious family; can. 542 does not forbid that. Similarly, Superiors of

[18] Cf. Woywod, *A Practical Commentary on the Code of Canon Law*, I, n. 903.

[19] Cf. cans. 542, 1363, and a decree jointly issued by S. C. Rel. and S. C. Stud., 25 July 1941; Bouscaren, *Digest*, II, pp. 166, 426.

Societies may receive a seminarian who leaves a seminary in order to enter the Society.[20]

CONCLUSION

Recapitulating, we conclude that Missionary Societies without vows have developed in their canonical implications for ordination more and more in the direction of Religious.[21] By the perpetual oath the members are incardinated in the Society and at the same time provided with a title for ordination (can. 981), for which the Superior General can issue dimissorial letters on their behalf. The Societies are in this manner with regard to ordination of their subjects placed on the same line with exempt Religious. Hence:

(1) The domicile which the candidate had before he entered the Society, does not count for the major ordinations; it does not indicate his own Ordinary. That will be the Ordinary of the place where the house of the Society in which he lives is situated.

(2) The tonsure does not effect incardination in the diocese of his present abode.

(3) Although one cannot say that for the duration of the temporary oath one is "equivalently" incardinated in the Society, it is certain that by the perpetual oath he is incardinated in the Society and acquires a necessary domicile. The

[20] Cf. Bouscaren, *Commentary*, p. 261; Rothoff, *Le droit des Sociétés sans Voeux*, 1949, p. 149; Creusen, *Religieux* et *Religieuses*, 4th ed., n. 145.

[21] That Missionary Societies have become more like Religious Congregations is also apparent from the fact that they form more their own distinct personality, independent of the ecclesiastical superiors on the missions. For this reason most of these Societies exclude the ecclesiastical superiors from their General Chapters. This is the case in Mill Hill Soc., Const. n. 21; Maryknoll Soc., Const. n. 36; Bethlehem Soc., n. 179; Columban Soc., nn. 24, 43; Quebec Soc., n. 12. They have a right to assist personally or through a representative according to the Constitutions of the Society of African Missions, n. 44, 2°, and of the Paris For. Miss. Soc. nn. 24, 2°, 39. The Constitutions of the White Fathers permit the Ordinaries to be present at the General Chapter with a deliberative vote but only personally not by a procurator (n. 31). The Soc. of Scarboro Bluffs gives them the right but not the duty to assist with a deliberative vote (n. 58).

Society furnishes the title of ordination "of the common table" by virtue of an indult.

(4) The oath of can. 956 must not be pronounced.

(5) The Ordinary of the domicile which one had before entering the Society has nothing to say in the matter of ordination.

(6) No bishop could ordain licitly the members of a Society without dimissorial letters of the Superior General (can. 964, 2°).

(7) The Superior must address these letters to the Ordinary of the place in which the religious house of the candidate is (can. 965).

(8) He cannot send them to another bishop except in accordance with cans. 966-967.

(9) He must also give a declaration that the retreat and the prescribed examinations have been made (can. 1001, § 4), and that he judges the candidate worthy to be promoted to holy Orders (Instr. "*Quantum Religiosi*", 1 Dec. 1931). The Ordinary can be satisfied with this declaration, but if he wants to, he has the right to examine the candidate or to have him examined (can. 997, § 2).

(10) Testimonial letters must always be issued by the Superior Major of the Society, covering the time which the candidate has passed in the houses of the Society (can. 993, § 5). When the Society has the right to issue dimissorial letters in which the Superior must testify "*de studiis peractis deque aliis iure requisitis*" (can. 995, § 1), the declaration required in the testimonial letters is already contained in these, and no separate testimonial letters need be issued.

Retracing the main outlines of development of Societies of secular priests pledged to mission work, we have seen that originally before the foundation of the Sacred Congregation of *Propaganda* there was none like it. All mission work was done by Religious, who enjoyed exemption from episcopal jurisdiction and enjoyed extensive faculties and privileges delegated to them by their religious Superiors. When in 1622

the S.C.P.F. was established, it was found difficult to align all mission activity according to one uniform pattern or to dispose of the available manpower at the discretion of the S.C.P.F. The monks could and did appeal to their right of exemption which placed them even beyond the reach of *Propaganda*. The need was felt for an army of priests over which *Propaganda* would have full power and such could only be secular priests. In 1624 therefore *Propaganda* decided to found a seminary for the purpose of training secular missionaries and the *Collegium Urbanum* came into being. This example was followed in 1637 by Frs. Pallu and Lambert de la Motte who appealed to the French bishops to allow candidates from their dioceses, who would be willing to give themselves to mission work, to volunteer for such work. For that purpose they founded the Institute of the Foreign Missions of Paris, which placed secular clergy at the disposal of *Propaganda* exclusively for mission work. The only stabilizing factor of the organization was an oath taken by the members before they left for their mission field, by which they pledged themselves to devote their whole life to the missions; they took a perpetual oath therefore. Though this oath did not excardinate them from their dioceses, it provided them with a title for ordination. Later on other institutes of secular priests were founded, also exclusively for mission work. Although they resembled religious institutes with vows in their organisation, still they did not take vows because their exact reason of existence was the need which *Propaganda* had of secular priests. In order to be able to make a discreet selection of suitable candidates and to give these candidates a training in the necessary virtues and qualities of character, what more natural than that in imitation of religious institutes with vows a sort of noviciate was introduced. With the institutes without vows this is not and should not be called "noviciate" in the canonical sense, but more appropriately a year of probation or of formation. After the noviciate the religious take temporary vows in order to find out by actual

practice for a year or more whether they will be able to live up to the usages and hardships of their future state of life. If they have stood the test to the satisfaction of their superiors and themselves they are allowed to take perpetual vows. It appears that in imitation of this, also the secular institutes introduced a temporary period of profession. There not being any vows taken in the secular institutes, however, this had to consist in taking a temporary oath, although there does not seem to exist the same reason for doing so as with the religious. The latter can and do practise the actual usages, practices and hardships of their future state of religious life, but for a student candidate of a missionary Society this is not possible. He cannot go out to the missions to practise for a year what he will have to do and put up with during the whole of actual mission life, and hence it sounds rather incongruous when at his temporary oath he promises and swears that he will consecrate himself for one year to mission work, when he cannot do anything else but stay home and complete his studies, as every seminarian does, whilst the latter obeys his superiors equally perfectly without having sworn an oath to do so. It is not without reason, therefore, that we said that the main use of the temporary oath is that it gives the superiors a longer opportunity to observe the qualities of the future members. If it was not for this, it would be advisable to adhere to the original practice, still observed in the pontifical *Propaganda* Colleges and with the Paris Foreign Missions Society, of omitting the temporary oath and of taking only the perpetual oath.

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Cases and Studies

THE INSINCERITY OF THE *CAUTIONES*— DISPARITY OF WORSHIP *

Those who chose the subject for discussion at this conference were inspired to leave it within quite general terms. For this we are grateful. In studying the matter for this paper, the author was impressed by the wealth of material for thought and appreciation that is contained in the theory that underlies the Church's legislation on *Cautiones* and sincerity of *Cautiones.* Because of this, he has judged it opportune to review with you the fundamentals of a question that seems to most of us, so banal and commonplace. Please tolerate this test of your patience in the hope that somehow or other there may be something useful, even instructive to be derived from the presentation of time-worn and thread-bare-from-discussion topics.

Part I. The Impediments in the Natural and Positive Divine Law

What is a Mixed Marriage and a Disparity of Worship Marriage? *In a mixed marriage* the emphasis is on the difference of cult, denomination, of worship; it is more a question of *"intercommunicatio in sacris."* God Almighty does play a part in the marriage; knowingly and lovingly most of the time, He is acknowledged and there is official dedication to Him on the part of the spouses. True, there is a difference in creed, in the worship of that God. God is known, reverenced, worshipped, but by one spouse, in a false manner. Perhaps, because of this fundamental consideration from a religious viewpoint, the Church considers with more tolerant eye and deems the impediment simply prohibitive, rather than diriment, the case of *Mixta Religio.*

In a disparity marriage we have a more serious situation. The rights of God are not acknowledged on the part of one spouse.

* Paper read by the Reverend William F. Allen, J.C.D., at the Conference of Chancery and Tribunal Officials of the Province of New Orleans, held at the Hotel Bentley, November 29-30, 1955, in Alexandria, Louisiana.

There is no dual dedication to Him. God has no part to play in the creed of one of the parties. The rights of God are more deeply violated. The spouse dedicated to God is more seriously involved in things not of God. There is by far a more detrimental *communicatio* for the spouse as for the offspring. There is a more serious contumely to God. The very nature of marriage in its primary effects is challenged. The creation of God—marriage—misses its goal. It is, therefore, not surprising that the Church should eye with anxiety this diriment impediment of disparity of worship. It is false worship; it is absence of worship of the True God that bothers the Church in this marriage.

In both types of marriage there is a certain deformity with the plan of God. Marriage is something holy, sacred. Even though not a Sacrament in some cases, marriage by its goal, namely, by the end assigned to it by God, marriage is holy, sacred. The Decree of the Holy See to the Armenians puts it nicely, "*assignatur triplex bonum matrimonii. Primum est proles suscipienda et educanda ad cultum Dei!*" Like many other things in the Church, marriage is holy because it is destined to the worship of God; because it will foster children who will be educated to know God in the True Religion. In the above-mentioned marriages, there is always the possibility that this end of marriage will not be attained; or if it is attained, it will be fulfilled with great difficulty, or under circumstances unfavorable to its perfection. Could we say that it is somewhat of a counterfeit of the true image of marriage? There is a deviation from the mould intended for marriage by God, the Creator. There is a deformity.

This deviation is all the more patent once we begin to enumerate the objections of the Church to this type of marriage, and especially true is this deviation in the disparity of worship marriage. The Church complains of these categories: 1) danger of perversion, of the loss of the True Faith; 2) danger that the offspring may never get to know the True God in the True Church; 3) the *communicatio* that is contained within these marriages—*communicatio in sacris* that is forbidden by Divine and Church Law; 4) the scandal that may be given by these marriages; 5) the implicit approval given to a false cult, its ministers and its ceremonial; 6) the ever-present potential danger of all these evils even when man has promised to the contrary; 7) and the offense of these

marriages insofar as the ideal of the Creator is concerned, and insofar as Jesus Christ pictured it as the image of Himself and His Church.

But is this deviation from the ideal of God and of Christ, of the essence of marriage? How serious a deviation is this? The primary end of marriage is the procreation and the education of offspring. To educate the offspring in the true religion is a solemn obligation from the natural and the divine positive law. Gregory XVI in 1846 wrote to the Bishop of Fribourg that Catholics, whether men or women, who enter boldly into mixed marriages, and thus expose themselves and their offspring to the danger of religious perversion, these sin against the natural and the divine law. (Cf. Wernz, *De Matrim.*, p. 186.)

In our own day, the Holy Office after having made considerable concessions to the Ordinaries of Japan on the matter of these marriages, ended with a solemn warning that the faithful and the catechumens must be ever mindful of the grave obligation of the natural and positive divine law for the Catholic education of the offspring.

Not to educate one's offspring in the true Faith, to expose the offspring to this danger, brings into focus a grave discrepancy with the plan of God, of all mixed marriages and disparity of worship marriages.

Granted that there is a serious obligation to educate the offspring in the true Faith, is this *bonum* of marriage of the substance of marriage? If it were not to be carried out, or not included in the act of the will which constitutes marriage consent, would the consent, from this angle, be vitiated? The answer would be negative. Wernz-Vidal, p. 186, write that not any kind of contrariness to the *bona* of marriage invalidates the consent, but only that contrariness which is substantial; that which attacks the consent in its very core. Failure to educate in the true Faith is not of this kind.

First of all, we must remark that the Code defines consent as the meeting of wills by which the *ius ad corpus, ad copulam* is exchanged, perpetually and exclusively, for acts which of themselves are apt to procreate offspring (c. 1081, n. 2.). There is nothing said about the education of the offspring in this definition of consent. Matrimonial consent is an act of the will—*matrimonium in*

fieri—and from that act of the will comes a state in life with its obligations. But marriage is primarily and essentially *in fieri,* in the act of the will. Living a common life, sharing bed and board, educating the offspring—all these obligations pertain to the state of marriage and not to the consent *in fieri esse.* These are an aftermath of the consent. Therefore, they can not affect the essential object of marriage. They can not touch the validity of the marriage. The *ius ad copulam, perpetuum* and *exclusivum,* is independent of the education of the offspring.

The Divine Law. Nevertheless, there is contumely to the Creator if the offspring is not educated in the true Faith. Would this not make the marriage invalid in the eyes of God, from the Divine and the Natural Law? Theologians and Canonists hold generally that no marriage is bound objectively to avoid *all* contumely to the Creator under pain of invalidity. We have a confirmation of this statement in a recent instruction of the Holy Office. It declared that as long as China was under Communist domination, the *cautiones aequipollentes,* the equivalent guarantees (not the written ones but only moral certitude about the sincere will of the Catholic party for the baptism and education of all the children—even though *de facto* these, the baptism and education, might be impossible), these *cautiones* would be required only for the liceity and not for the validity of dispensation from disparity of worship. From this we might argue, that since the ecclesiastical law demands the removal of the contumely only for liceity, then the natural law can not demand any more than that. Furthermore, as we will see later on, the Holy See admitting the serious possibility that all the children would not be baptized and educated in the Catholic Faith, still would allow the marriage; that in itself is an argument that marriage does not have to remove all contumely of the Creator, under penalty of invalidity.

The Positive Divine Law. Theologians have maintained almost on the score of unanimity that the positive divine law never did invalidate marriages of disparity of worship, even when the dangers spoken of were present. It is thought that marital unions with pagan tribes were remotely responsible for the ravages and the curse of the deluge; perhaps, too, it was for that reason that God repented that He had made man! (Cf. Gen. VI, v. 2-7.) To Moses

there was given the prohibition for the Jews to foster marital unions with the pagans. Seven tribes of Cana were absolutely and strictly forbidden to the marital aspirations of the Jews. (Cf. Exodus, XXXIV n. 16; Deut. VII, v. 1-4.) The danger of idolatry and perversion was the basis for these precepts. Even King Solomon fell prey to the dangers of inter-marriage with the pagans. (Cf. III Kings, XI, v. 1-11; III Kings, XVI, v. 31-32.) But Pope Benedict XIV would hold that all these precepts were prohibitive only and *not* diriment, invalidating, as far as the Old Testament was concerned. (*Fontes Juris C.* n. 394.)

The Divine Natural Law. We already have the word of the teaching *magisterium* of the Church that the neglect of the Catholic education of the offspring is a serious offense against the divine *natural* law. This lack of education in the true Faith makes the institution of marriage in a particular case fail to attain the end for which the Creator intended it. Since Almighty God has a plan for the governing of all creation—the Eternal Law; and since man is part of that creation and must be so guided, the natural law is a participation of the eternal law fitted to man as part of God's creation guiding him to his proper end. It is founded on human nature and promulgated by reason and embraces the entire moral order in all of man's actions in relation to God, himself, to his fellow-men. If man is the glory of God, and if man must know and love and serve God, man must have the means to the God-given end. One of these must be education for the offspring—education in the true faith. Since marriage is the means by which offspring comes, it must have that as one of its objectives. Failing to attain it is to fail in one of its purposes.

But the natural law commands certain things in different ways and with different degrees of importance. Some actions are commanded or forbidden in a most important and absolute manner since the moral and rational order of creation demands them or their abstention for its very existence. Such are of the *primary* precepts, commands. Those actions commanded are good but do not impose themselves at all times and under all circumstances since man is not held to do *all* the good possible. Actions forbidden are bad and evil in themselves, of their very nature; others are forbidden not because they are evil in themselves, but because they violate the rights of others, or possibly they might induce evil

consequences more or less injurious to the right order of creation. These latter are of the *secondary* precepts of the natural law.

A disparity of worship marriage, just as a mixed marriage, is forbidden by the natural law *per se*, but in the secondary precept class: they are forbidden not because they are evil in themselves but because of the dangers they present—moral dangers to the participants, the spouses, as well as to the offspring.

But we must always remember that the prohibition of the natural law is a prohibitive one and not a diriment one. This we hold from the Church's teaching and its *praxis*. If mixed religion or disparity of worship were a diriment impediment of the natural law, then there would be no dispensation possible from the Church.

When we have focused the difficulty down to its essential elements, we conclude that mixed marriages and disparity of worship marriages contain contumely of the Creator in varying degrees; that practically, this is never removed entirely, hence, the axiom that no such marriage is held to avoid all contumely of the Creator. The Church determines by its *cautiones* what amount of contumely must be avoided: remote must be made the danger to the faith of the Catholic spouse; remote, too, the danger of perversion of the offspring. We must always remember that non-removal of the contumely would constitute but a prohibitive impediment as far as the natural and positive divine law are concerned.

We ask, in order to safeguard and comply with the natural and the positive divine laws what, how far, how much, in what manner must the above *cautiones* be secured? Must the education of the offspring be actually secured? Must it be secured in its entirety? Must it be metaphysically certain that the danger to the faith is removed both for the spouse and the children? If contumely were sure to be present in some degree, could the Church, should the Church, go ahead nevertheless with the dispensation and sanction the marriage? Would some contumely negate the natural right to marriage on the part of the spouses? What is the minimum to be furnished by the spouses so that the prohibitive impediment of the natural and divine law cease and the marriage become licit? In answer to these questions we have recourse to a communication to the Missionaries in Japan, April 1938. (Cf. Bouscaren, *Canon Law Digest*, II, p. 281.) This instruction will help us to evaluate very

minutely the conditions and the amplitude of the divine law on the point in question.

The missionaries asked the Holy Office if a dispensation in disparity of worship could be given the Catholic party validly, if it was sure that according to the custom of the country, the Catholic party would be bound to turn one or more of the children to be born in the future to parents or guardians who would be pagan, and even Mohammedans, and who, it was foreseen, would prevent the Catholic education of the children in the true Faith—and hence the Catholic party could not promise the Catholic education of all the children. The difficulty: some children were sure to be educated outside the Catholic Faith. Could the marriage be permitted? Could the dispensation be validly granted? The reply was yes, it could be validly granted if the Catholic party was ready to do all he or she could to secure the baptism and the Catholic education of all the children. (Cf. Bouscaren, II, 282.) What is the minimum asked of the parties in the case of a disparity of worship marriage?—to be ready to do all he or she can to secure the baptism and the Catholic education of all the children.

The reasoning in the Instruction is most interesting. The Holy Office reminds the missionaries to be sure that the Catholic party must not be in any way the cause of the impossibility of Catholic education and baptism; too, they must be sure that the impossibility is not special to *this* marriage but would be to *any* marriage; they must remind the Catholic party of the serious obligation of providing for the Catholic baptism and education. If these requirements are fulfilled, and the Catholic party is ready to do all she can, then the dispensation may be granted.

Why may the dispensation be granted? Because the same law of God which imposes the obligations does not hold the subjects to the impossible. And if the Catholic party cooperates in this contumely—if it be cooperation i.e., in begetting the child—it is material cooperation and material cooperation is justified for a serious reason. This reason is verified under the circumstances, for otherwise, if the party did not enter this unfortunate marriage, then she would not be able to use a natural right—the right to marry. And no man may be deprived of this natural right except for a serious crime, or by his own free renunciation. The Holy Office ends on this note: no heavier burden is to be laid on the Faithful and

catechumens than the law of God and the natural law has imposed on them—the natural and the positive divine law do not forbid marriage, when then should the Church?

What then is required so that the person does not violate the natural and divine positive law on contumely to the Creator in this matter? According to the above, the sincere will to do all that he or she can to provide for the Catholic education of the children—even when circumstances beyond the party's control will make the actual attainment of the end impossible; nevertheless, this good will on the Catholic's part will justify the use of his or her natural right to marriage and its effects. This point is not without its value in the discussion at hand. It will be this good will, the minimum required by the natural and the positive divine law, that will be demanded under pain of invalidity by the ecclesiastical law, as we shall see later on.

Disparity of Worship Marriages and the Ecclesiastical Law. Canon 1070, § 1 declares as null the marriage of a non-baptized person with a person baptized in the Catholic Church or converted to the Catholic Faith from heresy or schism (*without proper dispensation*). Canon 1071 reminds us that whatever was written in cc. 1060-1064 concerning mixed marriages must be applied in the case of disparity of worship marriages. Note:

1. The Church *severissime* forbids such marriages;

2. And if there is danger of perversion to the Catholic consort or to the offspring, then not only the ecclesiastical law forbids them but the divine law itself;

3. Regardless, the Church impediment is always there unless removed by a dispensation; the prohibition of the divine law is present only if the danger of perversion is present. The two, therefore, are separable: the natural law impediment and the ecclesiastical—although the latter has its foundation in the former.

4. The prohibition of the divine law ceases when the danger of perversion is removed or made remote; the prohibition of the ecclesiastical law is removed only under the terms of the Church for a dispensation. The prohibition of the natural, divine law is only prohibitive; that of the ecclesiastical, is diriment, invalidating.

5. And we should remark, that if the prohibition of the natural law does not cease by the cessation of the danger of moral perver-

sion, then no human power can give a valid or licit dispensation since otherwise, it would be mocking the Creator of both the natural and the ecclesiastical law, even though the natural law in this case is simply prohibitive.

Conditiones, Cautiones, Causa. In this matter, too, it is well to ponder over the following:

1. That the prohibition of the natural law cease, certain *conditions* must be verified; namely, the danger to the faith of the Catholic and to the offspring must be removed or at least made remote and the minimum for this we have already noted.

2. The Church makes sure that these conditions are fulfilled by the *cautiones,* guarantees, in other words, and by moral certitude that these conditions have been verified. Hence, the conditions could well be fulfilled, even though the *cautiones* were never given!

3. Granted that the conditions have been verified, and the guarantees (that they have been verified) have been obtained, there is still a *causa* to be produced as to why the Church should permit this marriage. Since it is a *deformitas* with the sacred character thereof, there is still *communicatio in sacris;* there is still acknowledgment of heresy or infidelity; and rarely is all danger removed. Let us, therefore, be clear on conditions, *cautiones, causa* in the matter of dispensations in disparity of worship.

4. Lastly we note in c. 1061 (and the same must be applied to disparity of worship) three requisites of the Church for a valid dispensation in mixed and in disparity of worship marriages. They are for validity since the particle '*nisi*' is to be found and it applies to c. 1061, Nos. 1-2-3. The Church demands just and grave reasons; the *cautiones,* and thirdly, what is of interest, moral certitude about the fulfillment of the *cautiones*—that moral certitude is required for validity. This will be most useful to us in the coming dispute on sincerity of the *cautiones.*

Part II. The Impediment in the Ecclesiastical Law

The Origin of the Impediment. (Cf. Boyle, D. J., *The Juridic Effects of Moral Certitude on Prenuptial Guarantees,* p. 3, p. 26.) Today we are prone to associate the impediment of disparity of worship with the effects of Protestantism. But we must be mindful that the early Church was born amongst pagans. Even though

the early Christians were social outcasts, they were sought for as companions in marriage. In 107 St. Ignatius appeals to his faithful to form their marriages with the approval of their Bishops. And Tertullian in 223, basing his sermon on the text of Paul to widows 'to marry only in the Lord', warns Christians of the danger of idolatry if they should marry pagans. The Church did not countenance marriages with pagans; if the Church's blessing was to be had, there was one way to obtain it, i.e. to convert the pagan; else the Catholic married against the wishes of the Church but there is no evidence that the Church considered such marriages as invalid.

The Councils of the Church. From the third to the sixth centuries the Councils of the Church insist on the forbidden character of mixed marriages, i.e. with pagans. The Jews begin to be singled out in a very special manner; they are considered more dangerous to the Faith than the pagan. Christians were told by the Council of Elvira 305-306 not even to eat with them, much less marry them. The particular councils of France and Spain have that characteristic of being against Jews. If Christians have married, the councils offer but one remedy: separation. The Councils of Orlean (533) and of Toledo (633) suggest that remedy very insistently, and the Council of Arles in France would deprive any girl that marries a pagan of communion for a long and indefinite period of time. Again, in all these texts, there is no sure trend of invalidity.

Civil Law. Constantius in 339 edicted death for any Jew who would marry a Christian, and Roman Law did much to further the outlawing of such marriages in ecclesiastical law. In the East, the Church was in a favored position since the Emperors were much more church-minded than in the West, and, of course, heresies arose early in the East, and the Church faced more the problem of the mixed marriage. They were permitted by the Church only on one condition, that of conversion of the heretic. Her position was seconded by the civil power and her opposition to mixed marriages was potent and successful. In the West, it was the Jew who created the problem in disparity of worship as much as the pagan, if not more. Such marriages were severely forbidden, but there is

no evidence to declare that a diriment impediment existed, any time before Gratian.

Decretum of Gratian. In his *Decretum* Gratian incorporated the words of St. Ambrose forbidding Christians to marry infidels, Jews, or heretics. In his own resume and commentary, he likens the marriage of one of the faithful to an infidel to the marriage of those related by consanguinity and affinity in forbidden degrees, and tells us that there is one remedy: '*separandi sunt.*' Indirectly it was concluded that such marriages, therefore, were invalid. This was the first glimmer of invalidity to disparity of worship marriages. In the Decretals of Gregory IX, Innocent III (1198-1216) maintained in a response to the Bishop of Ferrara that a marriage between two members of the Faithful should be a "*verum et ratum*" marriage since it would be founded on the Sacrament of Faith which once received is never lost. Thus, from that time Baptism was made the juridic basis for a distinction between a mixed marriage and a disparity of worship marriage, the latter being held as invalid, and the former as valid.

The Council of Trent. The Council of Trent had nothing explicit on this point of mixed marriages and disparity of worship marriages. The Council followed a policy of reassertion of all essential doctrines in contrast to the negations of the Reformers and did nothing that might antagonize or worsen a situation, already lamentable. Provincial councils, however, all during this time, reiterated the general consensus that mixed marriages were only possible through conversion of the dissident party. Its decree *Tametsi* brought marriage more under the supervision of the Church as to its celebration, with whom, etc., and how.

Change in Discipline. Until 1750, no mixed marriage merited the Church's blessing or approval unless the non-Catholic abjured heresy. Marriages of disparity of worship were abhorred and considered as invalid. As a result of the Reformation, the royalty of Europe had to intermarry in families not of the Catholic religion; hence a problem for the Church. It had to grant dispensations for such marriages for reasons of the public good. That reason and only that reason could obtain a dispensation, and hence these were reserved for the royalty and not for the common people until 1750.

The French Revolution, the spread of Protestantism, the opening up of Mission Lands where the faithful were a pitiful minority, these reasons brought more changes in the Church's attitude on mixed marriages and disparity of worship marriages. Perhaps Benedict XIV (1740-1758) broke the precedent and permitted Vicars Apostolic for a term of two years to dispense from disparity of worship under the following conditions: 1) peaceful cohabitation without contumely to the Creator, 2) that all the children would be reared as Catholic, and 3) that the faculties were to be used only where Catholics were in the minority. The Pope also made a very important point, namely, that mixed marriages contracted without a dispensation were nevertheless valid, but not so for marriages with the impediment of disparity of worship. For lands other than in mission territory, the Pope demanded abjuration of heresy before a dispensation could be granted. Pius VI (1775-1799) went further and permitted the heretic to remain in heresy and marry a Catholic if before witnesses he or she would give the promises concerning the freedom of the Catholic to practise the Catholic Religion, and promise, too, the Catholic baptism and education of all the children.

Further Relaxations. When Prussia demanded that all boys in any family follow the religion of the father and later on, in 1803, that all the children of a family follow the religion of the father of the family, a severe complication set in as far as the dispensation of mixed marriages and disparity of worship marriages was concerned. From Leo XII (1825) and Pius VIII (1830), we learn the following: 1) the *cautiones* are based on the natural divine law; 2) to disregard them is a serious sin; 3) that the priest could passively assist as a guest at such marriages in which the *cautiones* were to be disregarded, and this only to avoid greater evils to the Church and the faithful; 4) the priest could assist, only if the Catholic party would give due assurance that the required promises would be kept.

Germany and Hungary by their civil laws made it illegal to give such *cautiones* concerning the education of the children. The Church met the situation by retaining the same requirements without the written agreement: some assurance had to be given that the natural law requirements were being met. Gregory XVI had

to do the same for the same countries (1839). Pius IX was more strict. He would not permit passive assistance except in cases of imminent danger to the Church. He urged Catholics to press for the *cautiones* as they were based on the natural law. He demanded them even *in articulo mortis*. Benedict XV did not vary the discipline either.

The Code of Canon Law. There is no more of passive assistance by the priest. The *cautiones* have been simplified and clarified. They are *regulariter* in writing. Although this admits of exceptions. Since the Code, in some places, as in Japan and China, there have been '*cautiones aequivalentes*'—not the *cautiones* as in the Code, but facts from which can be deduced in the external forum the will of the parties to fulfill the conditions necessary so that the contumely *Creatoris* will be removed, and this judgment can be formed in moral certitude. We have been told the minimum that the *cautiones* must contain, and the minimum compliance to be furnished by the parties to the contract of marriage.

Part III. Cautiones and Moral Certitude and Sincerity

Cautiones. Cautio means security, guarantee. The *cautiones* are a means to an end; the end is moral certitude that the contumely *Creatoris* will be removed or made remote. They are not the only means, but they are the most efficient and assured means. Gregory XIV wrote: "Talem promissionem quasi in pactum deductam praebet morale fundamentum de veritate executionis ita ut prudenter ejusmodi executio expectari possit." We must ever be mindful that *cautio, conditio, causa,* as explained above, are not the same; each has a different significance.

Cautiones and Moral Certitude. Perhaps the more important of details connected with the *cautiones* of the Code is contained in paragraph three of c. 1061. Moral certitude must be had about the fulfillment of the *cautiones* and this for the validity of the concession of the dispensation.

We note that the Code mentions the kind of certitude: *moral certitude.* It is not metaphysical, nor physical certitude. Moral certitude excludes every serious and prudent doubt of error, even though it does not exclude every possibility of error. It is that

certitude which includes that degree of probability sufficient to sway a prudent man in important matters because it excludes every serious doubt. This moral certitude is called that in *sensu lato;* for in the strict sense, moral certitude would exclude every possibility of error. Some authors call it certitude of the 'utmost of probability' or that of the *maxima probabilitas.* (Cf. Wernz-Vidal, p. 294; Cappello, 491.) St. Thomas describes it well when he says that it embraces the truth in most instances, but in a very few it fails to do so. (II, II, q. 70, a. 2.)

Moral Certitude and Sincerity hic et nunc. The Code in c. 1061, § 1, n. 3 demands moral certitude as to the future fulfillment of the *cautiones*: i.e., the legislator wishes the grantor of the dispensation to exclude every prudent doubt that the *cautiones* will fail of their objective. It says nothing about the sincerity of the promises *hic et nunc.* There is no explicit mention of sincerity as being required of the petitioners for the dispensation.

Before the Code. Before the Code, there was required *"moralis certitudo sive de cautionum sinceritate pro praesenti, sive de adimplemento pro futuro"* (S.C.S. Off., July 21, 1880). Many documents prove this statement: Dec. Secret. Status and S. Off., July 21, 1880, July 7, 1890; Prop. Fide n. 1731; S. Off., April 12, 1899, Dec. 10, 1902.

The Code. The Code is silent on this point. Many commentators hold that canon 6, n. 6 justifies the theory that the pre-code clause is implicitly in c. 1061, § 1, n. 3. Since the requirement of moral certitude about the fulfillment of the *cautiones* is derived from the natural and positive divine law, and since this moral certitude hinges on the sincerity of the parties *hic et nunc,* canonists claim that c. 6, n. 6 retains then the pre-code precept. Another argument is advanced founded on the same c. 6, n. 4 since there is doubt concerning the present law, one is not to abandon the precept of the old law. The vast majority of the authors presume sincerity as a natural requirement of the *cautiones!* However, the wide divergence among authors appears when we put the question: does lack of sincerity in the parties as regards the *cautiones,* invalidate the dispensation, and, therefore, the marriage? A formidable array of authors can be found on both sides of the question.

YES, Insincerity invalidates	*NO, it does not*
1. The parties must be sincere at least when the dispensation is granted since sincerity is an essential element of the *cautiones*. Insincere *cautiones* are no *cautiones*, they are worthless. By c. 1680, § 1 the dispensation is worthless.	1. Sincerity is not an essential element of the *cautiones*—which canon prescribes sincerity?
2. Can. 45 declares the dispensation or rescript of any kind invalid, if the final cause, motive in its favor is false: the dispensation based on the false final motive is, therefore, invalid.	2. Can. 45 speaks about *causa*, not *cautio;* they are not the same.
3. Can. 40 decrees that a rescript is granted on condition that '*preces nitantur veritate*'; otherwise the Church would encourage dishonesty, fraud.	3. Again, can. 40 speaks about *causa*, not *cautio*. No text tells us that the Pope has intention of withholding dispensation when *cautiones* are insincere.
4. Moral certitude in the Bishop's mind about the future fulfillment of the *cautiones* presumes sincerity *hic et nunc* in the petitioner.	4. There is no text making sincerity an essential element.
5. Internal sincerity is no more a hazardous element than is consent which is internal.	5. This may be true but there is no text decreeing the *cautiones* as essential to the consent; nor is there a text for sincerity as essential to the *cautiones*.

Oesterle's Debate With Toso on Sincere Cautiones. (Cf. Jus Pontificium XIII, 207-214.)

Oesterle: combining cc. 1061 and 1071, we deduce that disparity of worship is a diriment impediment; it is prohibitive

in the divine natural law. If the *cautiones* are in direct deception and are insincere, the Church does not, and should not, and can not intend to dispense in face of a prohibition from a higher law, the positive divine and the natural law.

Canon 1061, § 1, n. 3 demands under penalty of invalidity sincere *cautiones* since it demands moral certitude about the fulfillment of the *cautiones*. The contractual nature of the *cautiones* demand a basis of good faith, and sincerity. Besides historically, that sincerity was always demanded. Even to a late date just before the Code, conversion, abjuration from heresy were demanded of the petitioners for this dispensation as a proof of their sincerity.

Toso: replies that sincerity is too internal. Formalities required for the validity of a contract must be tangible, not intangible like sincerity. There is no way of deducing the truth of the basis if it is going to be sincerity. Who can tell at the moment of the contract, from the external forum, if the party is sincere or not? Sincerity is not of a contractual nature.

Oesterle: The rescripts of the Holy Office in the matter of marriage dispensations for disparity of worship are given in *forma voluntaria commissoria*, i.e., the Ordinary may grant them or not according as he believes the conditions are fulfilled or not. The Ordinary must know if the *Preces nitantur veritate* and thus if the *cautiones* will be kept. Therefore, c. 40 demands veracity, objective veracity and sincerity in the giving of the *cautiones*.

Toso: This may sound right but sincerity is not to be found amongst any of the conditions in the law for the *cautiones*.

Oesterle: complains that the opponents make capital of the internal character and nature of the sincerity; but the Code invalidates many acts because of internal elements. Cf. cc. 40 (rescripts); 92—your intention deter-

mines domicile; 104—error in contract (in mind of party); 169—nullity of a vote in an election; 556—intention of a novice; 572—religious profession (*vis metus*); 728—simony non-manifest-but *animus*. Hence it is not absurd to say that insincere *cautiones* do not fulfill the conditions of c. 1061, § 1, n. 2, and c. 40 is not kept by insincere *cautiones*.

Toso: But there is no canon requiring sincere *cautiones*.

Jurisprudence before 1948. Did it require sincere *cautiones?* Toso remarks that the Holy Office made mention of the moral certitude which both the one dispensing by delegated power and the executor *in forma commissoria* of the rescript of dispensation must acquire concerning the sincerity of the guarantors *pro praesenti,* and the faithful fulfillment of the obligations *pro futuro.* But nowhere is this sincerity said to be objectively necessary for the *validity* of the dispensation (J.P. XIII, 1933, p. 211-212).

The Holy Office. Many decrees of the Holy Office *hinted* at the sincerity that must be present in the guarantors: Aug. 1, 1759; Dec. 22, 1887; Apr. 29, 1891; Dec. 22, 1916, Jan. 14, 1932. But in the above replies there is no mention of sincere *cautiones;* only the moral certitude that one must have about the sincerity and the faithful fulfillment of the *cautiones.* To demand sincere *cautiones* is to put something in the text that is not really there. Besides, the opponents add, that whenever a case of insincerity was brought to the attention of the Holy Office, the remedy to the situation was separation from bed and board but no dissolution of the marriage; and this would have been the remedy, were the *sincere cautiones* an essential element for validity.

Authors. The substance of opinion of the authors was that moral certitude is of the essence. This moral certitude is a subjective state of mind rather than a judgment; but a state of mind with some basis objectively speaking but not necessarily objectively true. What was actually required was a moral certitude in the mind of the Bishop and the executor of the rescript that judging from the character of the parties, the circumstances of the case, and the nature of the promises, the parties are sincere and will fulfill their word. This is something different from requiring sincerity of *cautiones.*

The Rota. The Rota made one observation in a case of conditional consent: insincere *cautiones* did not alone invalidate the marriage: "quare etiamsi pars acatholica ficte promittat, peccat utique, sed quia consensus alterius partis his promissionibus non subjicitur tamquam conditioni, sine qua non, matrimonium validum est." We must note that the point: do insincere *cautiones* invalidate the marriage?—that point was not in litigation, and the remark was made simply in passing and not *ex officio* as part of the judgment. (Cf. Roman Rota, dec. of Aug. 11, 1921.)

Before 1948. Before 1948, therefore, sincerity was required by the Holy Office but it does not seem that it entered as an essential element for validity. The Rota had no established jurisprudence since no specific case of insincerity had been tried. The commentators stressed the moral certitude in the judgment of the Bishop and executor of the dispensation rather than sincerity in the parties; it was not objective certitude as to sincerity itself, but subjective in the mind of the Bishop.

Jurisprudence after 1948. The jurisprudence of the Rota has taken a definite trend since 1948. Four cases, specifically on the point of insincerity have been proposed and adjudicated by the Roman Rota. The most notable and the first was that of the Tribunal of Albany sent in on appeal. Then the Vicariate of Rome decided one and sent it on appeal to the Holy Office, but the latter did not judge it necessary to forward it to the Rota but confirmed the sentence of invalidity itself. The third was in April, 1951 from Brooklyn, N. Y. The last case was judged in Feb., 1952. The issue in these four cases was simply this: do insincere *cautiones* invalidate the dispensation in disparity of worship and thus invalidate the marriage?

The Albany Case. This is the most typical and clearest case. The groom was a Catholic. The bride a member of the Dutch Reformed Church. She became pregnant during their period of courtship and pressed for marriage. There was no other way to obtain marriage from the man except in the Catholic Church and that meant signing the *cautiones.* Faced with this ultimatum, she signed but a few days before the marriage, she refused to go through with any ceremony unless the groom entered into a signed agreement before a lawyer in which it was stipulated that all the

children were to be reared as Protestant, and that a Protestant service was to follow the ceremony before the priest.

The first child to be born was secretly baptized Catholic by the relatives of the husband, and then when the wife got well, she had it baptized again in her church. Five years after the marriage, the husband obtained a divorce on the grounds of adultery.

The Albany Tribunal remitted the case to the care of the *Promotor Justitiae.* When the case was about to conclude, a doubt arose on two scores: was the *bonum publicum* involved and thus was the *Promotor Justitiae* justified in handling the case, and, secondly, was there a *dubium juris* in the law, c. 1061; was it doubtful that the law really required sincerity in the parties signing the *cautiones?* If there was a doubt, then the marriage would have to be held as valid. Instead of a process, an authentic declaration would be necessary on the point.

Recourse to Rome. These two points were asked of the Holy Office. It replied that the tribunal should continue the case in the first instance and then send the case on appeal to the Holy Office. When the latter received it, without delay the Roman Rota was asked to hear it in second instance. The fact that the Holy Office remitted it to the Rota is a proof that there was no *dubium juris* in its mind. There was no doubt that sincerity was required in those who gave the *cautiones,* and that insincere *cautiones* invalidated the dispensation and the marriage.

The Rota decision highlights four points:

1. it is certain that insincere *cautiones* invalidate the dispensation and the marriage: *" tamen certa videtur."*

2. the *cautiones* are required for validity even in the danger of death.

3. the *cautiones* make certain the compliance with the divine law.

4. *contumelia Creatoris* means injury to the Creator by placing the Catholic party in the proximate danger of losing his or her faith and also placing the offspring in danger of not being assured of their Catholic education. Conclusion: without sincere *cautiones,* the Roman Pontiff dispenses illicitly and all others, by delegated power, dispense invalidly.

The Arguments of the Rota. Let us recall the argument against the thesis that insincerity invalidates the dispensation and the marriage: 1) no actual text in the Code calls for sincere promises; 2) c. 45 speaks about causes, not *cautiones;* 3) invalidating laws must be explicitly so; 4) sincerity is an internal element and can not have contractual power; c. 40 *'si preces nitantur veritate'* refers to *causa,* not to *cautiones.*

1. *The Promise.* The Rota Tribunal cuts across all these arguments and goes to the core of the question: What is a *cautio?* A promise. What is a promise? An act of the will binding one to do something, or omit something. What is the essence of a promise? The act of the will binding and imposing an obligation and hence the acceptance of the obligation. If there is no act of the will, no acceptance of an obligation, then there is no promise. Sincerity, therefore, is of the essence of the promise. Without it, the promise just does not exist. And without the promises, the *cautiones,* there is no dispensation; the basis for the dispensation, sincere promise, the basis crumbles. And if there is no promise, no *cautio,* then the *contumelia Creatoris* remains; God and the legislator are mocked; the *cautiones* are an empty formula; the dispensation has no meaning!

The Code did not change the nature of a promise, so there was no necessity of explicitly mentioning sincerity as a requirement for the *cautiones;* a *cautio* is a promise, and a promise must be sincere to be a promise.

2. *Law of the Code.* The above reasoning answers the objection: What canon requires sincere *cautiones?* And also, it is an answer to the statement that the *causa finalis* is not the *cautio!* In the case of the dispensation, the *causa finalis* included the fact that promises have been given that remove or make remote the prohibition of the natural law, otherwise the legislator would not and could not give the dispensation. The Rota also remarked that the *cautiones* must be given even in danger of death, else the dispensation is invalid and the marriage, too. It asks, what is the difference between no *cautiones* and insincere *cautiones?*

3. *The Holy Office.* The Rota tells us that these conclusions are those of the Holy Office, in whose competency rests the interpretation of matters pertaining to the dispensation from disparity of

worship. It cites the decree of the Holy Office, May 10, 1941: "The mind of the Sacred Congregation of the Holy Office is that even though the Holy See has required, from practice established from time immemorial, and now does strictly demand, in all mixed marriages whatsoever, that there must be guarantees for the fulfillment of the conditions by a formal promise exacted and made by both parties (c. 1061-1071), nevertheless the use of either the ordinary or delegated faculty of dispensing can not be said to be invalid if both parties have made promises at least implicitly, that is to say, have acted in such a way that it can be deduced and established in the external forum that they understood the *obligation of fulfilling* the conditions and *manifested* a *firm purpose* of accomplishing said obligation. (*AAS*, XXXIII, 294, 295.) The Rota points out that the Holy Office does not want merely a written document, but a *firmum propositum*, an *actualis voluntas*, of accomplishing said obligations. It is this sentence that recurs so many times in all the decisions: "and manifested a firm purpose of accomplishing said obligation."

4. *The Vicariate Case.* In the Vicariate Case, the Holy Office remarks that it is not to be presumed that if the Church insists on the written guarantees, it overlooks the internal element which, after all, is the most important in human acts. If the Church insists on the external element, it is only because it thus externalizes the internal element. If the latter were lacking, the Church would not grant the dispensation: hence it must be concluded that the Church considers both elements. Hence, it exacts a firm purpose to fulfill, and manifestation of this in the external forum. How are these two confirmed by insincere *cautiones?* Where is the *firmum propositum?*

The Holy Office was so convinced of the above that it did not bother remitting the case to the Rota on second appeal, but simply declared the marriage null. This is the strongest piece of evidence to support the thesis that *cautiones* insincerely given render the dispensation invalid, because the dispensation was granted on the strength of them being sincere.

But what about the argument that moral certitude is required only in the mind of the one dispensing or executing the dispensation? Felici in the Brooklyn case writes: "Neither is it to be

objected that from an external promise the one dispensing may acquire moral certitude; if we consider the *finis* intended by the legislator, it is not so much what is in the mind of the dispensing authority, but rather as the declaration of the Holy Office tells us, there must be an *accumulation of arguments* from which the conclusion may be drawn in the external forum that the party making the promise, knows of the obligation to be assumed and manifests a firm purpose to fulfill that obligation." Brennan writes that the essence of the *cautio* is not the external writing of it, but the will of the one making the promise. And the existence of this act of the will must be made manifest. And if it is not present, then the essence of the writing is absent and is worthless. It is inconceivable that the Supreme Lawgiver in the Church would be content with mere appearances, and not be concerned about the substance, thus throwing the door open to all sorts of simulation. (Cf. Jurist, p. 48, Jan., 1953.)

Dubium Juris. The last remark of the Rota: Is there a *dubium juris* concerning the insincerity and its invalidating character? The Rota decries this objection. How could there be a *dubium juris* if the Holy Office itself remitted the case to the Rota, a tribunal? If there is a *dubium juris*, then there is no case since the law is not clear. If the Holy Office asked for a decision on the validity and set the grounds for the test, then it must be admitted that no *dubium juris* exists in the mind of the Church.

The jurisprudence of the Rota, therefore, seems to be uniform and definite on the point that insincere *cautiones* invalidate the dispensation and in disparity of worship cases, invalidate the marriage. The decisions on all cases since 1948 have been for the invalidity, the reasoning in all four has been the same and the Holy Office has acted in such a way as to leave no doubt that the law on *cautiones* calls for sincere *cautiones* as one of the essential elements thereof.

Part IV. The Inferior Tribunals

What weight has Rotal Jurisprudence? Must Inferior Tribunals follow it?

Maroto in his *Institutiones* writes on p. 414 that a judicial sentence makes law only for the case in which it was rendered, but one can deduce a certain *modus agendi in similia.* This is a com-

mon occurrence in all tribunals and every court looks for a precedent particularly in questions not too clearly provided for in the codes—canonical or civil. In this manner arises a constant, uniform mode of judging called Jurisprudence and once established it is obligatory.

On p. 433, the same author continues: "After an adequate number of sentences and a long enough space of time and other conditions usually involved in establishing custom, jurisprudence comes into its own and if it comes from Supreme Tribunals, it is commonly held that inferior tribunals must follow that jurisprudence."

Maroto informs us that in the original schema of the Code, it was planned to add to c. 20 (the canon that guides us when we are looking for a norm not explicitly found in the Code for the interpretation of a law), that is, the makers of the Code were going to add the words: *norma sumenda est . . . a stylo et praxi Curiae Romanae et a serie uniformi sententiarum judicialium.* The words were not added because they were held to be superfluous and already found in the phrase "*a stylo et a praxi Curiae Romanae.*" It was, therefore, the intention of the Holy See that a source of law should be jurisprudence particularly from the Supreme Tribunals as part of the *Curia Romana.*

Archbishop Cicognani in his work, *Canon Law,* the English version of his Latin textbook, p. 109, declares that: "Since the jurisprudence of the Dicasteries of the Roman Curia has acquired these necessary notes (requisites as a source of law), it follows that all inferior judges are bound to follow it!"

The Rota itself quoted Maroto and incorporated his views in a sentence rendered May 6, 1941.

Michiels, in his *Normae Generales,* follows the same line of thought and makes more detailed the modality of the norm. He writes: "We think, according to the doctrine of the Code, that whatever practical solution to a problem even once or twice authentically proposed by the Roman Curia, by itself, regardless of the juridical reasonings and scientific basis on which it rests, constitutes a true norm of law and supplies as a *norma agendi,* which judges and interpreters may follow freely, and also must follow." He then gives the reason: "The suppletory nature of the solution does not come from its intrinsic nature, but from the will of the legislator, as expressed in c. 20, and because of the great prudence

and doctrine and learning of the Cardinals and Roman judges, sacred in the eyes of the Supreme Legislator."

In confirmation of this we cite, Wernz, I, n. 187; Santi, I, tit. 31; De Meester, I, 277; Vermeersch, I, n. 99; Toso, p. 63; Cicognani, I, 433.

In this case, the sentences are four embracing the years 1948 to 1952, and it is said that inferior tribunals have already pronounced the same sentence of invalidity for insincere *cautiones*, basing themselves on the Rotal jurisprudence. The reasonings have been identical in all four—one has cited the other. Different judges have been involved, yet all are of the same opinion. The Holy Office in whose exclusive competency rests the matter, called upon the Rota to decide the first case and then on its own, decided a case from the Vicariate, in the nullity. So we have jurisprudence of the Rota, approved by the Holy See, the Holy Office in an explicit manner. How then can any one write that there is still a *dubium juris* on this question? How then can an inferior tribunal refuse to accept the guidance of the Rota and the Holy Office? Once insincerity is proved in the parties to the *cautiones*, the dispensation is null, and the marriage is null.

Procedure Regarding the Proof. The marriage case involving insincerity is to be classed as one of simulation. The signers of the *cautiones* pretend to enter into an agreement, make all external signs point to it, and interiorly intend nothing of the kind. There is a positive act of the will not to bind oneself, not to assume the obligations.

The Rota has given excellent advice as to the procedure in any case of simulation.

1. We must try for the confession of simulation *coram testibus*: that the party intended to simulate as to the stipulations of the *cautiones*.

2. We must seek for a cause, a motive which seemed weighty enough, reasonable enough, upright enough to him or her to justify the deception.

3. Then weigh the circumstances before, during, after the signing as to form a chain of facts interrelated and confirmatory which add up to simulation and can not be explained except by the supposition that the person signing was not sincere.

For example, in the Albany case the woman was pregnant; she wanted marriage to save her reputation and help her in her embarrassing situation. Even though begging for marriage, she laid down the terms; threatened to disgrace the fellow if he did not acquiesce to her terms: marriage her way outside the Catholic Church. But the man was adamant, so she had to sign; after signing, she became hysterical outside the rectory and in anger declared that the *cautiones* meant nothing. Three days before the marriage she refused to go through with it unless the man would go and sign an agreement before a lawyer whereby the children would all be brought up Protestant. To save the situation the man agreed. There were two weddings as stipulated, and when the baby was born, secretly, before the mother was well, it was baptized as a Catholic, and then the mother afterwards had it baptized in her own church. And so went their married life; a double religious meaning to everything.

Hence, there was a *confessio* of the party who simulated. The *causa* was manifest: she had to get married and there was only one way, that was, marriage before a priest; so she simulated her true intention to attain her objective.

There were circumstances before, after and during the marriage that indicated this simulation and can not be explained in any other way than by simulation.

Remarks. The *cautiones* are so obnoxious to the party simulating that usually that person will not keep the fact of simulating to himself except in rare cases. Ordinarily, the 'outrageous' and forced signing will not go without caustic remarks and bursts of anger, indignation, etc., which will indicate clearly the possibility of simulation; the party will talk to others and there is most of the time a tinge of religious bigotry which is most expressive once it is aroused.

It will not be want of evidence, but difficulty in ferreting it out of its hiding place. Witnesses will be so bitter that they will not give any advantage to the Catholic party in the form of cooperation. Perhaps, witnesses may have a passing moment of willingness and the tribunal must be alert to seize that moment. In fact, the Albany tribunal took the testimony of the principal, the defendant, before the *libellus* had been introduced for fear that later on she would be hostile and uncooperative. Then the testimony

was introduced later at the formal trial. Luckily this was done, since the defendant refused all cooperation until the Rota asked for further clarification. The Albany tribunal makes that suggestion, namely, that we should take the testimony of the parties and the witnesses at the first available opportunity lest delay spoil the chances of the case for such testimony. We end this paper with the question: Should we, may we, take testimony in notarized form in advance of any case and then later on introduce it?

An After-thought. In the *Monitor Ecclesiasticus* for 1955, fasc. II, p. 320-323, an article by the Rev. Père Bender, co-author of Vlaming-Bender, *Praelectiones Juris Canonici,* gives an interesting commentary on the turn-about in Rotal Jurisprudence on the question of Insincere *Cautiones.* He had held for the validity of the dispensation in his textbook, p. 150-153. He was evidently taken back by the decisions of the Rota in the Albany case, 1948, Brooklyn, 1951, Brooklyn, 1952. He cites these cases. He tells us that 14 reputable authors were for the validity, 14 for the invalidity—all authors were most reputable. How then did the Rota determine that there was no *dubium juris?* Again, for the first sentence, there was no constant jurisprudence in favor of invalidity since one sentence had taken the opposite view (1942 Dec. XIII). However, this was but in passing and the question was not thoroughly or completely treated. Father Bender just could not figure out how the jurists of the Rota had come to their decision.

So, he suspected that the Holy Office had intervened and as representative of the Supreme Legislator had given that interpretation. Evidently the Auditors of the Rota had been given an authentic declaration that this interpretation was always the will of the Supreme Legislator.

Father Bender asked some of the Auditors and was told that the Holy Office had given a special instruction and this interpretation to, at least, one Auditor of the Rota both for the dispensation in *Mixtis* as well as that in Disparity of Worship.

His conclusion: All tribunals should follow the jurisprudence of the Rota in these cases of insincere *cautiones.*

Addendum: In the discussion of this paper many noteworthy comments were made which should impress those engaged in the pastoral ministry. We append them for their practical value.

1. Our traditional dictum that as long as the *cautiones* have been signed, there is no need to worry about the validity of the dispensation or marriage, must be dropped. Sincerity enters into the *cautiones* as an essential element now that the Rota has officially declared invalid so many marriages for lack of sincere *cautiones*. More attention must be paid to this vital element in the future.

2. Who must heed this? The Apostolic faculties empower the Ordinary to dispense and therefore, theoretically, it is the Bishop who must assure himself of the sincerity of the parties. But, actually, the Bishop bases his certitude on the recommendations of the pastor applying for the dispensation. Therefore, parish priests must fulfill this part of their duty.

3. And how? Authors have always maintained that the *cautiones* were only one source from which the certitude was to be obtained. In addition to heeding other sources, we must also advert to the importance to be attached to these sources. The Rota informs us that in this matter, certitude in the mind of the one dispensing, *non tam valet,* as the *cumulus rationum et argumentorum* from which may be concluded in the external forum that the parties acknowledge their obligation to fulfill the conditions, and manifest their willingness (*firmum propositum*) to satisfy them. We must stress the fact that moral certitude for the future fulfillment of the *cautiones* must be deduced from the giving of the *cautiones,* and from other circumstances of places, persons, etc., perceived by personal contact and investigation, and these will denote sincerity of intent on the side of the parties. There is a judgment to be made on the basis of many factors and not alone on the *cautiones,* the written document.

Let us suppose an extreme case. The Ordinary, despite the recommendations of the pastor, and the *cumulus rationum,* etc., can not bring himself to moral certitude on the *cautiones* in this particular case. Let us suppose that he is strongly convinced to the contrary because of personal knowledge of the parties; yet, in the face of the recommendation by the pastor, he grants the dispensation. Is it valid?

If such a marriage were to be submitted to the matrimonial court, its validity would hinge on the objective verification of reasons and circumstances surrounding the application and concession

of the dispensation which would indicate an objective basis for moral certitude, or the contrary. Following the dictum of the Rota that *non tam valet status mentis concedentis . . . quam potius cumulus rationum,* it would seem that the lack of certitude in the Ordinary, over-balanced by objective certitude, would be discounted. Moreover, it is held that a dispensation is valid if the *conditiones sine qua non,* and the *causa finalis* are objectively verified even though not known to be by the one dispensing. (Cf. Maroto, *Institutiones,* p. 366, B.)

FREQUENT HOLY COMMUNION (CANON 863)

When the Canonists and Theologians before the promulgation of the Code began to formulate Canon 863 on frequent Holy Communion Pius X (now Saint) was their inspiration for this work commenced under his supreme authority. Pius X approved, no doubt, every phrase of this succinct Canon, expressing the mind of Christ, the Church and his own. After much study, debate and revision it took the following form: "Excitentur fideles ut frequenter, etiam quotidie, pane Eucharistico reficiantur ad normas in decretis Apostolicae Sedis traditas; utque Missae adstantes non solum spirituali affectu, sed sacramentali etiam sanctissimae Eucharistiae preceptione, rite dispositi, communicent." The amount of literature, legislation and customs on frequent Holy Communion is tremendous. When reading so many contradictory statements and practices, one is amazed that frequent Holy Communion should have had so much opposition, accusation and persecution.

The Mind of Christ

On many occasions Christ expressed Himself that He wanted to be near His people to the end of time for whom He was to offer His life, passion and death. But nowhere does He speak so clearly as when He said: "I am the bread of life . . . This is the bread which cometh down from heaven; that if any man eat of it, he may not die. I am the living bread which came down from heaven.

If any man eat of this bread, he shall live forever; and the bread that I will give, is my flesh, for the life of the world . . . Amen, Amen, I say unto you: Except you eat the flesh of the Son of man, and drink his blood, you shall not have life in you. He that eateth my flesh and drinketh my blood, hath everlasting life: and I will raise him up in the last day. For my flesh is meat indeed: and my blood is drink indeed." (John VI, 48-56)

These words of Christ's promise were fulfilled the day before He suffered and died on the Cross when He gathered together His Apostles for the Last Supper and there "whilst they were at supper, Jesus took bread, and blessed and broke and gave to his disciples and said: Take ye, and eat: This is my body. And taking the chalice, he gave thanks, and gave to them, saying: Drink ye all of this. For this is my blood of the new testament, which shall be shed for many unto remission of sins." (Matthew XXVI, 26-28)

In Christ's teaching on Holy Communion we do not find exact determination just how often the Faithful should receive His Sacred Body in Holy Communion, but we do find strong language on the importance of receiving Holy Communion. It would seem, therefore, that Christ just wanted to emphasize the importance of receiving Holy Communion and to leave to His Church to interpret His mind on how often the Faithful should receive Him in the Holy Eucharist. But the promises of "eternal life" and "I will raise him up in the last day" attached to the reception of Holy Communion seem to indicate that the Faithful should not only receive Holy Communion worthily, but also very frequently.

The Mind of the Church

Christ left to His Vicars, Saint Peter and the Popes, to interpret infallibly His mind in the Church in all things pertaining to the salvation and sanctification of souls. To them we must turn for the proper understanding of the mind of the Church in the course of history. While there have been great Canonists, Theologians and Saints, who have shed not a little light upon the proper interpretation of the mind of the Church on various questions, yet the mind of Christ must be searched for in the decrees and the writings of the Popes for their respective period.

Fortunately, we have much to be thankful for the New Testament for therein we find the mind of Christ expressed not only by Saint Peter, but also by many other inspired writers who have interpreted for us the mind of Christ not only for their own times but also for our era. However, much has been left for later Popes, the Vicars of Christ on earth, to determine specifically the needs and the means which are to be used in the work of the salvation of souls in their respective period.

It would seem that during the time when the Church lived in the Catacombs, the Faithful received Holy Communion every time they were able to attend Holy Mass. The spirit of the Christians of those days was one—they all loved Christ as if with one heart. It was later after the persecutions of the first three centuries of the Christian era that some Christians began to grow lukewarm and to absent themselves from Holy Communion when they attended Holy Mass. Had more Christians persevered in the spirit of frequent Holy Communion according to the example of the first Christians in the Catacombs, perhaps in the course of history the many evils and heresies in the Church would have not opened the door for the Protestant Reformation in the 16th century.

While we may find many decrees in every century by the Popes and General Councils relative to frequent Holy Communion, however, the Council of Trent gives practically the summary of the previous legislation on the importance of frequent Holy Communion in these words: "Optaret quidem sacrosancta synodus ut in singulis missis fideles adstantes non solum spirituali affectu sed sacramentali etiam eucharistae perceptione communicarent, quo ad eos sanctissimi huius sacrificii fructus uberior proveniret." (c. 6, S. XXII, C. Trid.)

After the Council of Trent the Protestants denied the Real Presence and many Catholics argued against frequent Holy Communion.

The Mind of Saint Pius X

God chooses Saints and places them above the rank and file for special reasons. The special reason for Pius X to be canonized seems to be his wholesome decrees on frequent Holy Communion. His whole life seems to have been elevated above his natural talents, and perhaps he alone understood that it was due to his great

devotion to Our Lord in the Holy Eucharist that he moved from a humble family to become one of the greatest Popes of all times.

Notwithstanding much opposition, Pius X decreed that frequent and daily Holy Communion is not only permissible for those with ordinary dispositions, but it is very much desirable for the cures of modern evils. Pius X's mind is beautifully expressed in the following decrees: " 1. Communio frequens et quotidiana, utpote a Christ Domino et a Catholica Ecclesia optatissima, omnibus Christifidelibus cujusvis ordinis aut conditionis pateat; ita ut nemo, qui in statu gratiae sit et cum recta piaque mente ad S. Mensam accedat prohiberi ab ea possit . . . 3. Etsi quam maxime expediat ut frequenti et quotidiana Communione utentes, venialibus peccatis, saltem plene deliberatis, eorumque affectu sint expertes, sufficit nihilominus ut culpis mortalibus vacent, cum proposito se numquam in posterum peccaturos: quo sincero animi proposito, fieri non potest quin quotidie communicantes a peccatis etiam venialibus, ab eorumque affectu sensim se expediant . . . 6. Cum autem perspicuum sit ex frequenti seu quotidiana S. Eucharistiae sumptione unionem cum Christo augeri, spiritualem vitam uberius ali, animam virtutibus effusius instrui, et aeternae felicitatis pignus vel firmius sumenti donari, idcirco Parochi confesarii et concionatores, juxta probatum Catechismi Romani doctrinam (Part II, cap. 4, n. 60), christianum populum ad hunc tam pium ac tam salutarem usum crebris admonitionibus multoque studio cohortentur." (S.C. Concilii, 20 Dec. 1905.)

The saintly heart of Pius X reached out even to the little ones and demanded that the young souls should be prepared for their first Holy Communion at an early age when they are able to understand that Christ dwells in the Sacred Host.

The mind of the saintly Pius X relative to frequent and daily Holy Communion was confirmed by his successors: Benedict XV and Pius XI in their many allocutions.

The Mind of Pius XII

When Pius X formulated and promulgated the decrees on frequent Holy Communion, Pius XII was just a young priest, laboring in the Vatican and studying every piece of legislation that came from the Supreme Pontiff. Eugenio Pacelli's heart must have been gladdened by the new movement which the decrees of

Pius X must have created relative to frequent and daily Holy Communion. The mind of Pius X on frequent and daily Holy Communion Eugenio gradually imbibed so that later in the office of Supreme Pontiff he would lose nothing of the spirit of those decrees. Later, Eugenio becoming Pope Pius XII would open up new outlets for more frequent Holy Communion and thus bring many souls to practice even daily Holy Communion.

The new decrees on abstinence before receiving Holy Communion, the late afternoon and evening Masses and the new changes in the Holy Week ritual, especially Holy Communion permitted on Good Friday, are so many proofs that Pius XII's mind on frequent and daily Holy Communion has been amplified to include as many as possible of the Faithful to become frequent and even daily communicants of the Sacred Body of Our Saviour.

What reasons moved Pius XII to make such most unusual changes in our times and age? Some of these reasons have been given in the decrees and others (e.g. the drinking of water no longer impedes one from receiving Holy Communion) are quite natural and readily understandable. But perhaps there are other reasons which the Holy Father did not wish to make known publicly himself. We, however, who are living in the modern age when the Iron Curtain precludes many from not only frequent and daily reception of Holy Communion, but also from ever receiving Christ in the Holy Eucharist, can understand that there is an extra and important motive for all the Catholics wherever they are not prevented by the Iron Curtain diabolical impediment, to communicate frequently and daily, if possible, in order to overcome the atheistic powers which are striving to take away God from human hearts.

In recent years Pius XII has warned the Faithful of the proximate danger of atomic war where there will be no time for priests to minister Holy Communion to the dying on the battlefields, but where women and children will be exposed to sudden death even more than the soldiers on the front lines. It was the approaching possibility of atomic war, perhaps, that led the Holy Father to incorporate in his last Easter message the warning of the tragic danger in atomic arms race thus: " Every day is a melancholy step forward on this tragic road, is a hastening on to arrive alone, first, with greater advantage. And the human race almost loses hope of being able to stop this homicidal, this suicidal madness. To in-

crease the alarm and terror, there have come modern radioguided missiles, capable of transversing enormous distances, to carry thither, by means of atomic weapons, total destruction to men and things."

In case of atomic war frequent and daily Holy Communion could have prepared many souls to meet their Creator face to face even in the horrible destruction of the human body as it occurred in the two cities of Japan in 1945.

The mind of Pius XII on frequent and daily Holy Communion is about the same as was the mind of his predecessor Saint Pius X; however, it is more specifically applied to our times of the atomic age.

The prayers of the frequent and daily communicants, we hope, will help to sustain the Holy Father to maintain his vigilance over the Faithful with proper encouragement to our present very dangerous era, and we also hope that the prayers of the frequent and daily communicants will open a road to his future glory in heaven similar to that of his predecessor Saint Pius X.

The Mind of Our Catholic Youth

In recent years our Catholic educators have been shaping the mind of our Catholic youth in the Catholic schools according to the mind of Saint Pius X and Pius XII. With such luminaries as their guide our Catholic teachers are inspired to keep the standard of frequent and daily Holy Communion very high before their respective pupils. As a result we are happy that the response to those efforts of their teachers by the our Catholic pupils is not only delightful but also most consoling and hopeful.

Our parochial schools have not only increased in number and pupils, but there is a noticeable increase in the effort of striving for frequent and daily Holy Communion as recommended by Saint Pius X. Even the parents many times are put to shame when they compare their number of receptions of Holy Communion during the course of a year with those of their children in the parochial schools. But especially it is edifying to note the extraordinary efforts that some children must put forward by way of sacrificing necessary sleep in order to make it in time for Mass and Holy Communion. Some of them are really bordering on heroic virtue when they take it upon themselves to attend daily Mass and to re-

ceive Holy Communion. Such children, no doubt, are living a supernatural life on a very high plane. We are proud of such children and so must be their parents.

A noticeable increase we find in the number of our new Catholic High Schools where consequently many pupils practise frequent and daily Holy Communion. Many Bishops of the United States have turned all their surplus funds for the building of new High Schools. While the youth delinquency problem is growing in difficulties in the whole country, just how to conquer the many evils demoralizing our youth, the students of our Catholic High Schools have been steadily improving, due, no doubt, in a large measure to the increase of frequent and daily reception of Holy Communion. Many of them have formed the good habit of frequently receiving Holy Communion in their respective parochial schools; other minds just begin to grasp in their "teen" age the value and importance of frequent Holy Communion. It is true that in High School the pupils enter upon a new era of life where new dangers and passions incline them more and more towards evil, but because of those new dangers pupils in our Catholic High Schools see the need and importance of even more frequent Holy Communion than they had practised in the parochial school. It is very edifying and hopeful, indeed, to watch so many of our High School pupils approaching the Altar to receive Holy Communion so frequently. Their young minds, no doubt, are influenced very much to become better and better every time they receive Holy Communion.

In our Catholic Colleges we notice how the students emulate one another in the frequent reception of Holy Communion. Now their minds mature and they begin to fully understand the great gift of the Holy Eucharist. Here the students choose their profession in life and so many, because of their frequent Holy Communion, are led to choose not only to become daily communicants of the Sacred Body of their Saviour, but to dedicate their entire life so that many others would benefit by their sacrifice and good example to live closer to Jesus. Here they weigh their natural talents and inclinations and many of them conclude that the greatest thing they can do is to dedicate themselves entirely in some religious institution or the holy priesthood in order to shape the minds of Catholic youth to appreciate the great treasure of the Holy Eucharist. For the mind of Saint Pius X and Pius XII becomes, as it were, a

father to them, and their own mind becomes, as it were, a child growing and developing by the daily reception of Holy Communion.

The steady increase in vocations to the priesthood and the religious life indicate that the mind that was in Christ Jesus and Saint Pius X and Pius XII governs the mind of those happy souls who choose the way of life wherein they may be able to receive Holy Communion daily all their life. The Official Catholic Directory for the United States shows an increase each year of about one thousand to the holy priesthood and about two thousands of girls entering religious communities. The sum total is quite indicative that there are souls who study the mind of Christ, Saint Pius X and Pius XII. On the other hand, many of those souls burn with an eager desire to leave their parents and home country and to seek for a greater sacrifice in the foreign countries. Obviously, they are not motivated by reason of seeking travel in foreign countries, for they seldom leave their missions once they arrive there; their motive is to bring Christ Jesus to those underprivileged souls who do not even know that Jesus had died for them. Heroic virtue is the aim of such souls dedicated to the cause of Christ and His holy Church. By their sacrifices they wish to show that Christ by His passion and death has done much more than they themselves for the salvation of souls in the mission countries.

While the increase of vocations to religious life and to the missions inspires many of the Faithful to practise frequent and daily Holy Communion, yet it is the souls who are called to contemplative life that become the power-house of strength which, like locomotives, move so many others to practise frequent and daily Holy Communion. In recent years after the World War II the number of contemplative vocations, proportionately to the increase of other vocations, is noticeably very great. This fact indicates that the spirit and the mind of Saint Pius X and Pius XII is becoming more and more manifest through the spirit and the mind of the contemplatives to the Faithful all over the world.

The Mind of the Faithful

Naturally, the mind of the Faithful who have not been educated in the doctrine of frequent Holy Communion as promulgated by Saint Pius X does not compare so well with the mind of Catholic

youth who had been educated in Catholic Schools in the frequent reception of Holy Communion. However, we notice a trend in the direction of frequent Holy Communion of the Faithful in general and it is making progress. Besides the large number of priests and religious receiving Holy Communion daily, there are about 10,000,000 of the Faithful who receive Holy Communion every day. Of nearly 500,000,000 Catholics in the world, it is estimated that about 2% of them go to Holy Communion daily. Some of those, no doubt, do so at great inconvenience through all kind of weather and even sometimes in poor health. But they do edify when you see them day after day faithful to this holy and salutary practice. On the other hand, there are about 40,000,000 of the Faithful who receive Holy Communion once a week, mostly on Sundays. This number of frequent weekly communicants would make about 8%. There are about 100,000,000 who receive Holy Communion once every month, mostly on the first Fridays. The number of frequent monthly communicants would be about 20%. It is indeed very gratifying indeed to see so many approaching the Altar to receive Holy Communion so frequently. If we were to compare the present percentage of daily, weekly and monthly communicants with those numbers in the days before Pius X promulgated the decrees on frequent and daily Holy Communion, we would find the percentage in those days cut to one-half in general and much more than 50% cut for daily communicants. This fact indicates how much the decrees on frequent Holy Communion of Pius X have helped the Faithful to approach the Altar to receive Holy Communion frequently and even daily.

Gladdened though we may be by the progress made in the past 50 years in the frequent and daily reception of Holy Communion, yet we must not stop the advance at the present percentage. We must look forward to even greater possibilities, namely, the ideal goal of Christian perfection. This ideal of Christian perfection, to my mind, should manifest itself in the following percentage: daily communicants 20% or 100,000,000; weekly communicants 60% or 300,000,000; and monthly communicants 90% or 400,000,000. This may seem too ideal, but it is reasonable and within reach. There are men and women whose obligations may preclude them from daily approaching the Altar to receive Holy Communion, but few are really impeded from approaching the Altar to receive Holy

Communion on Sundays. With greater effort on the part of the clergy and the religious to make the decrees on frequent Holy Communion promulgated by Pius X better known to the Faithful, gradually in the course of another generation this ideal of Christian perfection could be attained. By reaching this ideal of Christian perfection, what a beautiful world we Catholics could make for even our non-Catholic brethren to live in!

Ten Million Converts A Year

Ever since the promulgation of the decrees on frequent and daily Holy Communion by Pius X there has been a steady and noticeable increase in the conversions to the Catholic Faith in all parts of the world. At present, it is estimated, there are about one million converts each year in the whole world. This number indeed is large, but it is not the maximum possible. With the increase of daily, weekly and monthly Holy Communions, the converts would, no doubt, increase proportionately. Our modern world is fastly growing and it should not be too difficult to reach ten millions of converts every year. With the increase of frequent and daily communicants the vocations are bound to increase; and with the increase of vocations more would be available for the foreign missions. What a tremendous opportunity for the new generations!

Many speak of modern evils of atheism and how to face those difficulties. But this problem can be solved by a better understanding and appreciation of the heart of Saint Pius X relative to frequent Holy Communion.

When I witnessed the Beatification ceremonies of Pius X, I felt that he, as it were, returned back to the Vatican to help his successor Pius XII in the work of governing the Church and of saving souls. It seemed to me then that there were two Popes present at Saint Peter's at the same time, both practically with equal power to change the world for the better. Strange as it may seem, yet I felt that Pius X was really present there even more than Pius XII for that day was dedicated to honor Pius X. I have great admiration for these two Popes for it was under Pius X that I had received my First Holy Communion and I was highly privileged on many occasions to watch Pope Pius XII in the beautiful and inspiring ceremonies during the entire Holy Year of 1950.

On the way home from the Beatification ceremonies of Pius X, I recall, I was much worried for some time over a very grave problem which had to be solved in a short time, yet try as much as I did I failed to see any solution for it. On the way home, however, from the Beatification ceremonies I was inspired how to argue the case before my Superior General and the next day this argument won the decision in my favor. This inspiring argument makes me think just how Saint Pius X must make himself present in the many difficult problems that his successor Pius XII must solve every day.

We Catholics owe more perhaps than we will be able ever to repay to Saint Pius X and Pius XII for the doctrine they promulgated and for their shining example of devotion in respect to the frequent and daily reception of Holy Communion.

May all Catholics study and imbibe more and more of this most salutary doctrine and may their example of devotion be to future generations what Saint Pius X and Pius XII have been to us.

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Decrees and Decisions

CANONICAL

HOLY WEEK *ORDO*

November 16, 1955 the Sacred Congregation of Rites issued a general decree concerning changes in the liturgy for Holy Week in the Latin Rite. In addition to certain rules regarding the time for saying various portions of the Divine Office and for celebrating Mass, the decree contains a rule extending the Lenten fast and abstinence to midnight of Holy Saturday, thus changing the rule of Canon 1252, § 4.

* * * * *

CIVIL

CENSORSHIP

The Supreme Judicial Court of Massachusetts has held unconstitutional a statute requiring a license for the showing of a motion picture on Sunday. Following the ruling of the United States Supreme Court in the *Burstyn* case that motion pictures are entitled to protection of the "freedom of speech" clause in the First Amendment, the Massachusetts court held that the licensing provision constituted a prior restraint on freedom of speech in violation of the First and Fourteenth Amendments and guarantees of the Massachusetts Constitution. The exhibitor had been denied a permit to show on Sunday a picture which had been shown on weekdays and he contended that the picture was not of such character as to disturb the peace and quiet of the Lord's day or to interfere with its due observance.

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POLITICAL BROADCASTS

The Communications Act (47 U.S.C.A. § 315) provides that if one candidate for office is permitted to use broadcasting facilities, equal time shall be given to all other candidates for the office, and states further that the broadcaster " shall have no power of censorship over the material broadcast." As a result, broadcasting companies have worried about their impotence to avoid libel suits as a consequence of what has been said over the air from their stations. The Supreme Court of Errors of Connecticut has, however, held that the broadcasting candidate is protected from libel actions by the fair-comment privilege and that his immunity extends to the station.

In a mayoralty campaign one candidate made allegations about a private business, i.e. that it was about to go out of business and that 1,000 jobs would disappear, which were entirely false. The Court, however, rejected a libel action, saying " speechmaking and the broadcasting of speeches in an election campaign are, on general principles, occasions of qualified privilege." The privilege here had not been abused, the Court found, for though the statements were based on hearsay they were not maliciously made. The broadcasting company was likewise protected unless it had maliciously permitted its facilities to be used and knew the statements were false or had acted in bad faith. Even misstatements of fact are privileged under the fair-comment rule, if made in good faith, the Court remarked. Though the business was private, the loss of jobs was a public matter, the Court also ruled, and as a consequence proper matter for public discussion.

The Court went on to say that a political campaign is a time-honored American institution indispensable to our way of life and that Courts must be careful not to permit the law of libel and slander to encroach unwarrantably upon the field of free public debate.

* * * * *

RIGHT OF TEACHER TO DISCIPLINE STUDENT

The Superior Court of Connecticut for Litchfield County has ruled that while the plaintiff, alleging he had been struck by a teacher for disciplinary reasons, had stated a cause of action

against the teacher, he could not sue the school board. The reason for alleging that the school board had lost its common law immunity to suit was the passage, in 1953, of a statute providing that a board of education "shall protect and save harmless . . . any teacher or other employee . . . from financial loss and expense arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental injury to . . . any person . . ." if the teacher was acting within the scope of his employment or under direction of the board.

The Court held that this was simply an indemnification act. Had the legislature intended to end the immunity conceded by the common law this it could have done by direct language.

* * * * *

ANOTHER GIRARD WILL CASE

Girard, by his will, left the major portion of his estate in trust for the establishment of a college for the education and maintenance of "poor white male orphans." He named "the Mayor, Aldermen and citizens of Philadelphia" as trustee. This was at that time the official title of the city. The present trustee is the Board of Directors of City Trusts.

This Board rejected the application of a Negro boy to enter the College. This rejection the Orphans' Court of Philadelphia affirmed because from a reading of Girard's explicit instructions the Court concluded that he knew precisely what he was doing and that he had restricted enrollment to "poor white male orphans" deliberately. The Court, therefore, felt that it could not rewrite the will to eliminate the word "white."

The contention that the purpose of the suit was not to alter Girard's will, but to bring its provisions into line with present-day school segregation policy, and that this could be done because the will was written more than a century ago and did express a wide educational objective, the Court rejected. Though an instrumentality of the state was the trustee, it was really acting in a private capacity administering a private trust, the Court held. Therefore, the action of the Board refusing admission to a Negro solely on the basis of color did not involve the desegregation doctrine applicable to public education.

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MECHANICS' LIENS

The Superior Court of Delaware has ruled that even in the case of a multiple housing project the lien is individual as to each unit in the development and that to perfect a mechanics' lien the lienor must file his claim within the statutory period (ninety days) from the date of completion of each separate unit.

The Court of Appeals for the Tenth Circuit has ruled that the state mechanics' lien statutes cannot be employed to support an incumbrance on land allotted to Indians. In this case an Indian had contracted for the building of a dwelling house on land held for him by the United States in trust. While he had made full payment under the contract, some sub-contractors remained unpaid, hence the suit. The Court went on the theory that the imposition of a mechanics' lien on Indian trust lands would render nugatory the declared policy of the United States.

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GUILT BY KINSHIP

The New York Supreme Court for New York County terms a " classic example " of the " thoroughly un-American theory of guilt by kinship " the rejection of an applicant for a New York City police job. The candidate was turned down because his father had, in 1939, signed a Communist Party nominating petition. In a previous case, in which the candidate himself had signed a Communist petition the Appellate Division ruled that mere suspicion of possible subversive tendencies will not justify rejection of an appointee. Here, the petition was signed by the father when the petitioner was only nine years old, and there was no evidence to cloud his personal loyalty background. The Court also observed that some people will sign a nominating petition without being fully aware of what they are signing. Very often even ardent members of political parties are duped into signing a petition by misleading statements.

* * * * *

WIRE-TAP EVIDENCE

The Court of Appeals for the Ninth Circuit has ruled that in a prosecution for immigration law violations the evidence obtained

by a Federal Communications Commission engineer while monitoring broadcasts of a licensed radio station on the defendants' New Mexico cotton farm cannot be used. Since there is no other way for the Communications Commission to enforce the Communications Act, the Court concedes that this type of "spying" on private radio broadcasts is legal. The fruits of this "spying," however, can only be used in the enforcement of the Communications Act and cannot be made available to other public officials for criminal prosecutions not related thereto. Evidence obtained, however, from broadcasts made before the defendants obtained their operating licenses was admitted by the Court.

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EVIDENCE OF OTHER CRIMES

The Pennsylvania Superior Court, against the tendency of some courts to be more lenient in admitting proof of other crimes in prosecutions for sex offenses, takes the position that evidence of earlier similar crimes committed with other persons is never admissible. The courts which do admit such evidence do so on the theory that it establishes the defendant's propensity to commit crimes of the type charged. Conceding the confusion in this field of law, the Pennsylvania Court insists that one well established rule is that proof of earlier offenses can never be admitted for the sole purpose of showing depravity or criminal propensities. In the case in question an offer was made to prove that a man charged with corrupting the morals of two young girls had, about one year previously, made similar advances to another girl. The case, however, raised no question of identity, motive, or guilty knowledge, and the earlier act was too remote to show a "sequence." Therefore, the Court applied the general rule barring proof of general depravity.

* * * * *

HOSPITAL RECORDS

The Court of Appeals for the Ninth Circuit, disagreeing with the view of the Court of Appeals for the District of Columbia Circuit, admits hospital reports in evidence as business records. The reports in question were those of consulting hospital staff doctors examining a deceased seaman at his personal physician's request,

and were made in accordance with hospital regulations. Since the reports were made in the regular course of business and were required of the consulting physicians in order to maintain their right to serve on the hospital staff the Court holds that they bear the seal of trustworthiness and are admissible under Sec. 1732 of the Judicial Code.

The New York Court of Appeals has also held hospital records admissible, but only insofar as they relate to the patient's treatment. Thus it will not permit use of a hospital's record of the explanation given by the plaintiff in a negligence suit. While the fact that he had been struck by an automobile might be relevant to his treatment, identification of the automobile or of what caused it to strike him is not.

* * * * *

RIGHT OF PRIVACY

The Florida Supreme Court has held that an innocent bystander at a newsworthy event has no right of privacy against the use of his picture on a news telecast of the incident. The Court reasons that, as the latest and most effective medium for the dissemination of news, television is governed by the same right-of-privacy rules as newspapers, radio stations, and motion picture producers. The public interest in the free dissemination of news gives each of these media a " qualified privilege " to invade the privacy of those present at any newsworthy event. In the instant case the bystander was purchasing a newspaper at a hotel cigar stand on his way home from work when the hotel was raided for gambling. The news telecast showed him being questioned by the police, but did not identify him as a gambler or mention his name. The Court further observes that any acquaintance who saw him on the television screen would know there was nothing wrong with his being where he was.

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COURT-MARTIAL OF VETERANS

The United States Supreme Court has held that when Congress enacted Article 3 (a) of the Uniform Code of Military Justice it exceeded its powers under Article I of the Constitution and in-

fringed upon the prerogatives of the courts given in Article III. Consequently, the former airman who was transported to Korea for trial was not properly subjected to court-martial for pre-discharge crimes. One of the principal aims of the Constitution, noted the Court, was to avoid trials by experts or specialists in favor of trial by juries fairly chosen from different walks of life. Military tribunals, though endowed with a high sense of justice, have never been constituted in such a way as to give them the qualifications the Constitution deems essential to fair trials of civilians.

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COST OF TRAVEL DEDUCTIBLE

The Court of Appeals for the First Circuit has held that a man who holds two different jobs located some distance apart can obtain traveling expense deductions not available to an employee traveling the same distance to only one job. In the case in question a Massachusetts high school principal was allowed to deduct his expenses of driving twice each week to another city thirty-seven miles away where he worked as a university night class instructor.

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PUBLIC FINANCING OF PRIVATE-SCHOOL PUPILS

The Supreme Court of Appeals of Virginia has found that the State Constitution's provision against appropriations to private institutions bars not only payments to the private schools themselves but also payments to parents or guardians to cover private-school tuition. Even assuming the soundness of the view that private schools receive no direct benefit from transportation (*Everson v. Board of Education*) or textbooks (*Borden v. Board of Education*) furnished the pupils, the Virginia Court observes that the same cannot be said for the payment of tuition. Such fees "go directly to the institution and are its very life blood."

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MAIL-ORDER DIVORCES

The New Jersey Supreme Court has rejected a defense based on alleged good-faith reliance on a Mexican mail-order divorce, with-

out specifically accepting or rejecting a suggestion that the *mens rea* element be added to the proof requirements in a bigamy prosecution. The American Law Institute has proposed in its Moral Penal Code that the definition of bigamy contain a specific requirement of proof of *mens rea,* which is the minority view. Still, the Court is convinced that the defense asserted in this case has no merit. When the defendant remarried he was not under a factual misapprehension. Any reasonable inquiry about the validity of his divorce would quickly disclose its utter worthlessness.

* * * * *

HOSPITAL BARRING DOCTOR

The New York Supreme Court, Appellate Division, has said that the governing board of a New York public hospital cannot arbitrarily, without notice or hearing, deprive a qualified physician of the use of the hospital's facilities. The opinion concedes that there is no constitutional right to practice medicine in a public hospital any more than there is an absolute right to sell alcoholic beverages or drive an automobile. Valuable privileges, however, are also given the protection of the law. The doctor, in the instant case, had used the hospital for a number of years. He was capable and qualified. He had developed a large practice. The Court concluded, therefore, that the decision to bar him in effect deprived him, without notice or hearing, of the right to practice in an area of the city. There was, consequently, a lack of procedural due process.

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UNITY OF HUSBAND AND WIFE

The Court of Appeals for the Fifth Circuit has held that a husband and wife can be guilty of conspiracy to violate the Mann Act. The Ninth Circuit had taken the view that because husband and wife are a single legal entity they cannot be guilty of conspiracy. The District of Columbia Circuit has held that they can be so guilty. The Fifth Circuit agrees with the District of Columbia Circuit. It observes that the unity of the spouses has been severed by the various Married Women's Acts. Consequently, there is no reason to import into the Mann Act "the concept of the common law unity of husband and wife now prevailing in few,

if any, of the states." It agrees that there is no longer any reason why the law should not recognize the obvious fact that the relation of husband and wife does not prevent two persons from conspiring to commit an offense.

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OUT-OF-STATE DIVORCE

The Nebraska Supreme Court has subjected to collateral attack a divorce obtained by a Nebraska wife in Colorado without contest, which was based on fraudulently obtained jurisdiction of both the person of the defendant and the subject matter of the suit. The court found that Colorado domicile was established by the wife's false evidence, and that service of the summons personally on the husband "was accomplished by trickery and deceit in inveigling" him into Colorado under false representations. Consequently, the Nebraska court declares that "fraud pervades the whole decree from the inception of the litigation."

THOMAS OWEN MARTIN

Book Reviews

PRINCIPIA GENERALIA DE PERSONIS IN ECCLESIA. Dr. Gommarus Michiels O.F.Min.Cap. Editio Altera Penitus Retractata et Notabiliter Aucta. Desclée et Socii, Parisiis—Tornaci—Romae, 1955. Pp. xviii-708.

Undoubtedly, the most extended treatise on the preliminary canons of the second book of the Code of Canon Law is the volume just published by Dr. Michiels. This is the second edition of his work on Persons. It is notably enlarged and it considers every question which could be conceivably discussed in the pertinent canons. Those who are acquainted with the commentary of Dr. Michiels will be happy to learn that this new edition is now available.

There are two points in this book which are not sufficiently covered in other commentaries but which are discussed at length by Dr. Michiels.

The first of these points is the treatise on moral persons. The philosophical concept of a moral person is adequately considered but by far the major portion of this part of the commentary is devoted to the historical development of the juridical concept of a moral person. Dr. Michiels clearly demonstrates the inadequate concept of *universitas* in Roman Law once the Christian religion exerted its influence. Dr. Michiels states it is not the purpose of the Code of Canon Law to provide a definition of a moral person. He even indicates where some terms such as *societas, institutum* are not always convertible with the term *persona moralis.* This is an obvious case where the Code does not employ uniform terms with their rigidly consistent concepts.

The second of these points is a discussion on the necessity for counsel in canon 105, 1°. Everyone knows that there has been a long controversy on this point with commentators of considerable reputation on both sides. Dr. Michiels offers a fair presentation and critique of the arguments advanced for and against the necessity of such counsel. This is no off-hand discussion. The consti-

tutive elements of the juridical acts involved are carefully examined. The integration of the several parts of an act is weighed. Dr. Michiels favors the side of those who maintain that counsel, when required in law, is necessary for the validity of an act. However, he admits the probability of the opposite opinion.

A satisfactory bibliography, according to historical periods, is printed before the text of the various chapters. The index is serviceable. The content of this book is too much for the course of Canon Law in the Seminary but its value for graduate students and professors is unquestioned.

FOUNTAIN OF JUSTICE. A Study of the Natural Law. By John C. H. Wu, LL.B., J.D., LL.D. Sheed and Ward, New York, 1955. Pp. ix-287. Price $3.75.

It is a mounting pleasure to see more and more published studies in the Natural Law. One of the latest is the work of Dr. John C. H. Wu, Professor of Law at Seton Hall University. The obvious fact is that the vigorous reaction against the School of Positivism in the field of Law has produced important studies on the basic concepts and foundations of a Philosophy of Law which can support legal systems reasonably and thoroughly. The author of the book under review deserves commendation for contributing to such a Philosophy.

Modern studies of the Natural Law have followed a general pattern of considering the subject first in its historical development and then in its contemporary acceptance. This book does follow this pattern but it stresses the reception of Natural Law in the common law of America. The vicissitudes of the Natural Law from the beginning of the legal system in America to the present day are ably described by the author. Various decisions of the courts are introduced to show this development. Perhaps, the best example of basic justice involved is the author's description of the gradually accepted concept of workingmen's compensation. Here the fundamental notion of the workingmen's protection is asserted and established aside from the effects of contract or the liability of negligence. The chapters on the common law in its new home, as the author entitles them, should be read and thoroughly digested.

The spiritual side of the Natural Law is not neglected. A sec-

tion of this book is devoted to the teaching of Christ especially in regard to His connection with law and judges. Included in this same section, are chapters on Natural Law and Positive Law and on Law and Equity. The latter chapter is a skillful study on rules and exceptions.

A final chapter is given over to a study of the Art of Law. Here, comparisons are made between Justice and Truth, Justice and the Good and Justice and the Beautiful. This chapter, by way of an epilogue, is something relatively new in the study of the Natural Law. It shows that these terms are not really convertible but that Justice contains the other concepts.

There is no separate bibliography. The index is mostly a composite of names of authors and judges.

PARISH PRIEST by Eugène Masure translated by Angeline Bouchard. Fides Publishers Association, Chicago, Illinois, 1955. Pp. ix-255. Price $3.95.

It is to be hoped that the title of this book will not induce prospective purchasers to believe that it considers specifically the rights and obligations of parish priests as stated in Canon Law. Instead, this book is a consideration of the juridical status of priests who labor in parishes and, generally, in work conducted by a diocese but who do not belong technically to any religious Order, Congregation or Institute.

A book of this kind is always timely and its publisher should be encouraged to continue to offer the public works which will be appreciated especially by the clergy but which will not easily find a patron among the more commercial establishments.

The author divides his treatise into two parts: the priesthood and priestly spirituality. Although, admittedly, the greatest work of the priest is to offer the Sacrifice of the Mass more is included in the concept of the priesthood than this. It includes everything which, under the authority of the Ordinary, can be done to further the kingdom of God in this world. Hence, not only strictly religious activity is demanded as supervised by the priest but also social activity which in any way at all can benefit the layman and improve his situation in this world as a prelude to the next. Catholic action is stressed.

From this general concept of the priesthood, the author moves to the second part of his book. Here the priest and his Bishop are seen as acting as a unit. No real division of labor. The spirit of a community, all members of which are properly employed, is the spring from which arises the spirituality of the priest. Texts of Sacred Scripture are introduced to indicate the relationship between the priest and his Bishop.

In a general way, the author should be complimented on his endeavor to show that the spirituality of the clergy who are not technically, in a canonical sense, religious is in a real sense the equal of the spirituality demanded in religious communities. The status of perfection is not perfection itself and this thought cannot be mentioned too often. The priest in the parish has as many opportunities to perfect himself through his work as the religious who engages himself in the labors of his community. The author has done another admirable thing in setting forth the proper status of the secular clergy by exposing the at times fraudulent claims of some few religious. In keeping with this idea it is of importance to present here a lengthy quotation incorporated in the author's book (pp. 252-253) from a note of the Sacred Congregation of Extraordinary Affairs to the Bishop of Namur, dated July 13, 1953 in reference to a papal Allocution, Dec. 8, 1950.

" When anyone says that a priest who wants to tend toward perfection must become a religious or at least a member of a secular institute; and when anyone tells a young man who is hesitating to choose between the secular priesthood and entrance into religion, that it is question of generosity; when anyone declares that he who decides in favor of the secular clergy proves that he is not generous enough to give himself entirely to the service of God; when anyone thinks that he cannot counsel a young man in undecided state to enter the seminary rather than a religious institute; when anyone goes so far as to say that the Church ' tolerates ' the secular clergy as a last resort, but that the ideal would be for all priests to be religious: that is a false understanding and an erroneous application of the Holy Father's Allocution of December 8, 1950 (*Annus Sacer,* A.A.S. Volume 43, 1951, pp. 26-36). The Bishops have a right to oppose propaganda for the recruitment of religious societies which is based on incorrect theoretical premises and capable

of leading into error, and which is at the very least lacking in practical loyalty; and they may establish just and strict limits for this propaganda by administrative decision."

It is tedious to object, as the reviewer has repeatedly, to the use of the term "diocesan clergy" in preference to "secular clergy". The author uses the former term consistently but it remains historically and canonically incorrect. The Holy See, as seen in the above quotation uses the proper term, "secular clergy". It is not too much to expect that authors will follow this example.

A useful preface is contributed by Dr. Pascal Parente of the Catholic University of America. This preface is better than most for it analyses briefly the content of this book and some disagreement is expressed. The secular clergy especially should be thankful for this book and it should be purchased and read widely.

FOUNDATIONS OF THE CONCILIAR THEORY by Brian Tierney. Cambridge Studies in Medieval Life and Thought. New Series: vol. iv. Cambridge University Press, 1955. Pp. x-280. Price $5.00.

One of the more interesting propositions in Public Ecclesiastical Law is the constitutional structure of the Church. The basis for this structure was for a long time debated by theologians and canonists alike. The matter is settled now as stated in the Code of Canon Law but it was not until the Council of the Vatican that the juridical position of the Pope was definitely determined.

The book under review, an historical treatise of the conciliar theory, investigates the opinions of canonists relative to the position of the Pope as understood and taught before and during the great schism of the West. It is somewhat difficult now to understand the state of the Church during those trying days. There were objections to the activities of the Papacy both on theoretical and practical grounds. These objections were at times confused and made even more difficult to understand by personal accusations. It is to the credit of the author that he succeeds in separating the added difficulties from the main issue involved.

Briefly, the views of the canonists were principally in favor of a complete monarchical structure of the Church with the Pope as its head or a corporative body with the Pope acting in the name of

the whole body of the faithful. The favorite general term for the latter view where the jurisdiction of the Pope was inherently in the body of the faithful and revocable for cause was *congregatio fidelium*. Most canonists admitted that the Pope could lose his office for public heresy and some thought his jurisdiction would then return to the body of the faithful. To heresy was added a number of misdeeds whereby the good of the Church was endangered. Acting in the name of all the faithful was the General Council or, at times, the College of Cardinals.

It should never be assumed that the protagonists of the corporate theory of the Church were men of bad faith and distinctly inimical to the Papacy. During the great schism arising after the election of Pope Urban VI, there developed some doubts concerning the actual and legitimate Pope. Both lines had successors. Within a generation lines were divided definitely among kingdoms, Cardinals and faithful.

The author divides his treatise into three parts. The first discusses the Decretist theories of Church government. The second reviews the aspects of thirteenth century ecclesiology while the third deals with conciliar ideas in the fourteenth century. All these parts are very well done with ample citation in the text and in footnotes. The author exhibits an unusual grasp of his sources and a real ability to weigh them in their proper perspective.

Judged by its title, the most important part of this book is the first. There the scriptural text *Tu es Petrus* is studied in the writings of the Decretists. The meaning of the term *Romana ecclesia* is investigated and the relationships between the Pope and the General Council and between the Pope and the Cardinals are carefully studied. The whole ground work for subsequent conciliar theories is found in this section of the book. Time and time again in later years texts from the Decretists were to be used in support of these theories. Therefore, anyone who would learn the position of the Church and its head as taught by some canonists in medieval times must read the writings of the Decretists. Often enough the texts of the Decretists would seem to support either a papal monarchy or a conciliar theory. Terms such as *plenitudo potestatis, ecclesia, ecclesia Romana* which today offer no difficulty were in earlier centuries in a situation of flux where different canonists gave different meanings to these terms.

The author provides several appendices of considerable value. For students of Public Ecclesiastical Law and, generally, of Church History the section devoted to the gloss of Huguccio on the text *nisi deprendatur a fide devius* is the most important. Coupled with this is a multiple citation of the writings of Joannes Teutonicus on the authority of the Pope, Church and Council. For the average student, the author's notes on canonists and anonymous works mentioned in his text are of practical value.

The bibliography is excellent. Fortunately, the author had access to manuscripts not always available to students. The reference list cited by the author is much better than will be found in other books which consider this period of medieval history and Public Ecclesiastical Law. The author does not choose between the various propositions set forth in medieval times. It was not his business or purpose to do so. He properly limited himself to an historical investigation.

CONCILIA POLONIAE. Études critiques et Sources, VIII. Les Synodes du Diocèse, de Przemyśl (Rite Latin) et leurs Statuts. "Ossolineum", Institut Éditeur, Wroclaw, 1955. Jakub Sawicki. Pp. xii-376.

Synods are among the best indications of the condition of the Church at the time of their appearance. Historians, therefore, who would investigate the Church in Poland from 1415 to 1723 will find the above mentioned book indispensable. Fortunately, for those who do not read Polish a summary of the work carried out during those years is furnished in French. The actual statutes and *acta* are, of course, in Latin.

The author discusses the various synods in separate chapters. He, however, provides the statutes and *acta* in the last chapter. It is interesting to learn of the vigor with which the Polish Ordinaries stressed the discipline of the Church and of the care with which they guarded against abuse by clergy and laity.

This volume will not be of much use to the average student in the Seminary or in graduate work. Professors, however, in Polish Seminaries should recommend this work to their students. And, of course, this volume should be found in the Canon Law libraries of Universities. Some photostatic copies of original documents are thoughtfully provided.

THE PARENTAL OBLIGATION FOR RELIGIOUS EDUCATION by Rev. Ronald Martin Endebrock, B.S., S.T.L. The Catholic University of America Studies in Sacred Theology (Second Series) No. 84. The Catholic University of America Press, Washington, D. C., 1955. Pp. xix-267.

The studies published by the School of Sacred Theology at the Catholic University of America are worthy of the closest attention. The study mentioned above is a dissertation which develops ideas found in Natural Law and which deserves a place among the best of the current series.

The author states in the complete title of his dissertation that he will stress the training of the pre-school child. Some observations could be made here but they would deal more with psychology than with law. The few pertinent canons of the Code of Canon Law are mentioned but they are not subjected to extensive analysis.

After the author has stated the sources from which parental obligation for religious education arises, he discusses the necessary preliminaries to education and the actual training. Certain duties of instruction, examples, vigilance and correction must be discharged by parents if they are to fulfill their obligations.

The author discusses parental obligation which must be carried through the separate years, from one to six. These years culminate in the use of reason and this proposes the duty of the selection of the Catholic school. But, even at this time, parents are not discharged from the obligation of caring for the religious education of their children.

Dissertations of this kind have a proper place in a theological series. They indicate that theology is not aloof from the problems of life and family.

The bibliography and index are satisfactory. The division of books and articles, arranged according to topics to be taught, will be found helpful. This dissertation should be called to the attention of those whose duty it is to inform and instruct parents in their obligation.

Edward Roelker

Chronicle

GENERAL

The Very Rev. James Alberiene, S.S.P., founder and superior general of the Society of St. Paul is conducting a canonical visitation of the houses of the society in the United States and Canada.

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Monsignor Thomas McCarthy has been named Chancellor of the Military Ordinariate to succeed Bishop Griffiths who was appointed pastor of St. Monica's parish in New York City.

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The Rev. John Kelley of Trenton has been named Director of the NCWC Bureau of Information, succeeding Monsignor Thomas McCarthy.

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Cardinal Innitzer, Cardinal Archbishop of Vienna and noted foe of communism, died on October 9.

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The Trappist Priory of Notre Dame des Prairies at St. Norbert's was raised to the rank of an abbey at the general chapter held at Citeaux, France.

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The Very Rev. Walter Helmstetter, O.C.S.O., has been elected abbot of Our Lady of Genesee Abbey to succeed the late abbot McGinley who died on September 19.

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Archbishop Roy of Quebec has been named President of the Administrative Council of the Canadian Catholic Conference.

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An Apostolic Administrator has been named for the Archdiocese of Seville, Spain, headed by Cardinal Segura whose health has been failing for several months. The new Administrator is Archbishop Monreal, Coadjutor to Cardinal Segura since 1954.

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Monsignor Fischer of Omaha has been elected President of the National Conference of Catholic Charities.

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Six Cardinals and more than two hundred members of the hierarchy participated in a Solemn Pontifical Mass offered on November 17th at Trinity Chapel, Washington, D. C., by His Excellency, Archbishop Cicognani, Apostolic Delegate to the United States.

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Archbishop Keough of Baltimore was elected Chairman of the NCWC Administrative Board. The Administrative Board again named Monsignor Howard Carroll to the Office of General Secretary. Monsignor Paul Tanner was renamed Assistant General Secretary.

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The Rev. John Lennon, assistant secretary of the National Conference of Catholic Charities has been appointed Dean of the National Catholic School of Social Service, succeeding Monsignor John McClafferty in that office.

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Archbishop O'Brien, Auxiliary Bishop of Chicago and President of the Catholic Church Extension Society since 1925, celebrated a Pontifical Mass before members of the hierarchy gathered on the occasion of the fiftieth anniversary of the Society. The Mass was celebrated in Holy Name Cathedral, Chicago.

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Monsignor John McClafferty, Dean of the National Catholic School of Social Service, has been appointed to the new post of Assistant to the Rector for University Development at the Catholic University of America in Washington, D. C.

DIGNITIES

Bishop Louis B. Kucera of Lincoln, Nebraska, celebrated the Silver Jubilee of his consecration on October 4. His Holiness honored him on the occasion by naming him an Assistant at the Papal Throne.

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Bishop Atkielski of Milwaukee has been chosen as the outstanding resident of Polish descent of Milwaukee by the members of the Society of the Polish National Alliance.

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His Excellency, Archbishop Cicognani, Apostolic Delegate to the United States, was the recipient of an honorary degree, the Doctorate of Humane Letters, at the fall convocation of Georgetown University.

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Archbishop Cushing is the first clergyman of the United States to receive the rank of Commander in the Order of the Cedars of Lebanon.

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Bishop Weldon of Sprinfield, Mass., was elected President of the Alumni Association of St. Joseph's Seminary, Dunwoodie.

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A monument has been erected in Korea in honor of Cardinal Spellman in tribute to him for his relief and rehabilitation efforts in behalf of that country.

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Archbishop O'Hara of Kansas City, Mo., observed the Golden Anniversary of his ordination to the prieshood and the Silver Anniversary of his consecration as bishop on October 28.

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Archbishop Keough of Baltimore received an honorary Doctor of Laws degree from Loyola College, Baltimore, Md.

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On the occasion of the 75th anniversary of the diocese of Kansas City, His Holiness Pope Pius XII and His Excellency Archbishop Cicognani, Apostolic Delegate to the United States, praised Archbishop O'Hara for his work on the new English translation of the Bible and for his work in catechetics.

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The Very Rev. John Sheehy, S.M.A., has been named first rector of the new Queen of Apostles Seminary at Dedham, Mass.

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Archbishop Boland of Newark, Auxiliary Bishop Reilly of Brooklyn, and the Very Rev. Sylvester Taggart, C.M., Eastern Provinicial of the Vincentians, received honorary degrees on December 1st from St. John's University.

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The Very Rev. William Marrin, O.P., elected on December 9th to the office of Prior Provincial, was confirmed as Prior Provincial of the St. Joseph Province of the Dominicans.

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Archbishop Byrne of Santa Fe, marked his thirtieth anniversary as a bishop on November 30.

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Bishop Brady of Sioux Falls, S. Dakota, has been named an Assistant at the Pontifical Throne by Pope Pius XII.

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Two new Auxiliary Bishops were named by His Holiness Pope Pius XII. They are: Bishop-elect Stephen Levin of Blackwell, Oklahoma, who has been named Auxiliary Bishop of San Antonio; and Bishop-elect Philip Furlong who has been named Auxiliary to Cardinal Spellman in his capacity as Catholic Vicar for the Armed Forces.

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Cardinal Spellman received the Grand Cross of the Order of Merit of the Republic of Italy from the Italian Ambassador to the United States for his aid to the Italian people.

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Monsignor Francis J. Brennan, a priest of the Archdiocese of Philadelphia and an Auditor of the Sacred Roman Rota since 1940, has been named a Consultor of the Pontifical Commission for the Authentic Interpretation of the Code. Monsignor Brennan, an official likewise in the Sacred Congregations of the Sacraments, the Council, and the Propagation of the Faith, is the first American priest to be named a Consultor of the Pontifical Commission for the Authentic Interpretation of the Code.

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The appointment of Bishop-elect Eustace Smith, O.F.M., as Vicar Apostolic of Beirut for Latin Rite Catholics in Lebanon was announced by the Apostolic Delegation in Washington, D. C., on December 24. Bishop-elect Smith is Vice Rector of Christ the King Seminary at St. Bonaventure, N. Y.

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Bishop-elect John Morkovsky of San Antonio has been named Auxiliary Bishop to Bishop Laurence FitzSimon of Amarillo, Texas.

ROMAEUS W. O'BRIEN, O.Carm.

THE CANON LAW SOCIETY OF AMERICA

Annual National Meeting

On Tuesday and Wednesday, October 25-26, 1955, the Canon Law Society of America convened for its seventeenth annual meeting, held at the Hershey Hotel, Hershey, Pa. The registration, which had begun at 10:00 A.M. in the hotel lobby, revealed the participation of about 180 active members, representing some sixty archdioceses and dioceses, and a dozen or more religious communities.

Early Afternoon Session

The initial session was held at 1:30 P.M. in the Spanish Room of the Hershey Hotel. Monsignor John F. Gannon, President of the Society, upon opening the session with prayer, bespoke the Society's thanks to Bishop Leech of the Harrisburg diocese for his patronage, and then called on Father Martin N. Lohmuller, Vice-President of the Society, for announcements with reference to arrangements for Masses the following morning either at the hotel or at the local parish church, with regard to various forms of entertainments available during the periods between sessions, and in relation to transportation facilities back to Harrisburg, either for the Railroad Station or for the Harrisburg State Airport. Registration could continue to 5:00 P.M. Over 200 priests were expected to be in attendance at the banquet that evening.

The President introduced the Rev. Romaeus W. O'Brien, O.Carm., J.C.D., who delivered a paper on "Absence and Departure from the Cloister." The speaker covered many detailed practical problems in his presentation, and thereupon welcomed questions and further discussion from the floor. When the discussion came to an end, the session adjourned at 3:00 P.M.

Late Afternoon Session

Monsignor Cannon presided at this session. He introduced Monsignor Edward M. Burke, J.C.D., Chancellor of the Archdiocese of Chicago, who was to present a paper on "The Legal Profession in Regard to Separation and Divorce Cases." Monsignor Burke, in view of his temporary affliction with hoarseness, called on Father Robert Hagarty of Chicago to read the paper for him. The paper noted that there was considerable failure on the part of lawyers and judges in the civil courts to co-operate with the Church's authorities in the matter of granting civil divorces, and an apparent absence of the due sense of responsibility in Catholic law schools in their courses touching on this matter. Attorney Basil Shorb outlined in substance the laws of the State of Pennsylvania on marriage and divorce, and Attorney John Bream offered a comparative study of the ecclesiastical and civil dispositions of law on separation and divorce. Both Mr. Shorb and Mr. Bream indicated a large measure of willingness on the part of Catholic lawyers and judges to receive guidance from responsible ecclesiastical sources, and urged the publication of a Manual that could implement the closer co-operation that is desirable. Upon lengthy discussion the session adjourned at 5:15 P.M.

The Dinner Session

At 5:30 P.M. a fellowship forum served to prepare a fuller relish of the dinner that was to follow at 6:00 P.M. Guests of honor at the dinner were their Excellencies: the Most Reverend George L. Leech, Bishop of Harrisburg; the Most Reverend John F. Dearden, Bishop of Pittsburgh; the Most Reverend James L. Connolly, Bishop of Fall River; the Most Reverend Rembert Kowalski, O.F.M., Bishop of Wuchang; the Most Reverend Jerome D. Hannan, Bishop of Scranton; the Most Reverend Eric F. MacKenzie, Auxiliary Bishop of Boston, and the Most Reverend Coleman F. Carroll, Auxiliary Bishop of Pittsburgh. In his address to the Convention Bishop Leech first of all read a message from the Holy Father. At the end of this message the Holy Father imparted his Apostolic Benediction to all who took part in the meeting. Bishop Leech in his address stressed the fact that chancery and tribunal work, though unrewarding in its accompanying personal relationships, was nevertheless an important facet in the work that relates to the pastoral needs of the faithful. He reassured the personnel of chanceries and tribunals that their faithful and exact discharge of their duties was deeply appreciated by their bishops, by the Apostolic Delegate, and also by the Holy See.

Business Session

At 8:15 P.M. the annual business session was called to order in the Spanish Room. The reading of the minutes of the Sixteenth Annual Meeting was dispensed with. The President then led the assembled group in prayer for the following members of the Society who have died during the past year:

Most Rev. Joseph E. McCarthy, Portland, Maine
Most Rev. Charles D. White, Spokane, Washington
Most Rev. Arthur Beliveau, St. Boniface, Manitoba
Most Rev. Anastase Forget, St. Jean-de-Québec
Most Rev. Louis Rheaume, O.M.I., Timmins, Ontario
Most Rev. Joseph A. Hickey, O.S.A., Villanova, Pa.
Rt. Rev. Howard Smith, Fargo, North Dakota
Very Rev. John Rausch, Albany, New York
Rev. Francis B. Bruksieker, Toledo, Ohio.

The Society's Treasurer, the Rev. Clement Bastnagel, of the Catholic University, Washington, D. C., was then invited to present his financial report. Lithoprinted copies had been distributed to all who were present at the business session. A surplus or gain of $920.21, apart from the added gain of $477.42 by way of accrued interest, had brought the Society's assets to $20,128.74, as compared with $18,731.11 a year ago. Actual income apart from the accrued interest had been $6,321.32, and total expenses had been $5,401.11, thus leaving the gain of $920.21, as previously noted. From a reserve fund there had been expended in favor of the Catholic University's Canon Law Library a sum of $392.77. Available still for future expenditure was a sum of $113.50.

The Society's principal enterprise had again been the distribution to its members of printed C.U.A. Canon Law dissertations. In the course of the past year 6 titles in approximately 1,875 copies had been mailed out. This brought the over-all total of the distributed titles to 210 in approximately 53,575 copies. Many titles were still to appear in print. Their distribution could enhance the number of distributed copies by 9 or 10 thousand.

Inasmuch as Father Bastnagel was Chairman of the Committee on Membership, he reported that the Society's total membership consisted of 546 active members, and 228 inactive members. The motion to accept both the financial statement and the membership report as filed was seconded and passed unanimously.

The President then read a note of thanks from the Rt. Rev. Edward G. Roelker, S.T.D., J.C.D., Dean of the School of Canon Law at the Catholic University of America, for the generous subsidy which the Society had furnished to the University's Canon Law Library book-purchasing fund.

Dr. Stephan G. Kuttner, of the University School of Canon Law, was invited to speak about the prospective Institute of Research and Study in Medieval Canon Law. He detailed its plan and its work as consisting in the publishing of a better critical text of source materials, such as the *Decretum Gratiani*, and of bringing into print important medieval treatises of Canon Law which had never before been published.

Monsignor Gannon read a letter from the Rev. Alfred Julien, Chairman of the Committee for the Promoting of Regional Conferences, stating that the South and the Southwest were not yet sufficiently organized to warrant the holding of regional conference meetings. Father Julien asked, in consequence of his added responsibilities as pastor in a parish that had to contemplate building and expansion, to be relieved of the chairmanship of the Committee.

Monsignor James P. Kelly of New York, Chairman of the General Committee on Arrangements, asked for a rising vote of thanks to be tendered to Bishop Leech and to Dr. Lohmuller and his committee for the fine planning and the gracious hospitality evident at the Hershey Convention. Monsignor Kelly announced that Bishop Eustace of Camden had invited the Society for its next Annual Convention to Atlantic City of October, 1956.

The election of new officers was next in order. The Nominating Committee presented the following slate of candidates:

For President:	Rt. Rev. John J. Carberry, Brooklyn, N. Y.
	Rt. Rev. Joseph B. Stenger, Belleville, Ill.
	Rt. Rev. John J. Hayes, Bridgeport, Conn.
For Vice-President:	Rt. Rev. Josiah G. Chatham, Natchez, Miss.
	Rev. John F. Podesta, Joliet, Ill.
	Rev. Andrew Quinn, New York, N. Y.
For Recording Secretary:	Rev. John J. Connolly, San Francisco, Calif.
	Rev. Paul. Harrington, Boston, Mass.
	Rev. Robert Hagarty, Chicago, Ill.

No further nominations were presented from the floor. Accordingly the nominations were closed, so that the balloting could follow. The result of the balloting was to be announced at some later session.

The matter of subsidizing the projected Institute of Research and Study in Medieval Canon Law was taken up for discussion. The Treasurer of the Society indicated that a sum of $113.50 was still available in the Book-Purchase Fund for future expenditure. In view of this he felt that full and exclusive support could on this occasion be directed to the new Institute. He ventured that a sum of $1,000.00 could be set aside for that purpose. After some continued discussion the Rev. William A. Galvin, of Fall River, Mass., presented a motion that $1,000.00 be allocated for that purpose. This motion was seconded by Monsignor E. Robert Arthur, of Washington, D. C., and accepted unanimously by the assembled members.

The ballots had in the meantime been collected. There was no further business to be expedited, and accordingly the session adjourned for a little respite before the final evening session dealing with recent jurisprudence.

Recent Jurisprudence

The Most Rev. Jerome D. Hannan, Bishop of Scranton, graciously consented to preside at this session. First of all, Monsignor Joseph I. Johnson, J.C.D., of Springfield, Mass., as Chairman of the Committee on Research and Discussion, submitted a report on the work undertaken by the Committee in furthering greater uniformity in the formularies employed in the premarital investigation of the free status of parties contemplating the contracting of marriage. There was promise that a substantially complete form might be produced that would serve its purpose throughout the country. Monsignor Johnson offered explanation on various questions raised from the floor, and designated the next annual meeting as a time when a definitive report might be made by the Committee.

Mimeographed copies of replies furnished by Roman Congregations with reference to various cases and queries were given out at the session. Monsignor Joseph Madden of Scranton read the cases, explained their background, and entertained further discussion under the moderation with which Bishop Hannan directed the argumentation of the replies furnished for the various cases and queries.

The session revealed many answers and replies that could contribute to a more profound and uniform understanding and appraisal of the Church's law. The session came to a close at a late hour, with everyone sensing that his field of canonical knowledge had been appreciably extended, and his canonical outlook considerably enhanced.

Morning Session

On the second day of the Convention the members convened for a session at 10:30 o'clock. Dr. John E. McGowan, M.D., of New York, presented a highly interesting and richly informative paper on "The Fundamentals of

Psychiatry as They Relate to the Ecclesiastical Judge." There followed upon this the paper, "Mental Disease and the Marriage Court," given by the Rt. Rev. John J. Hayes, of Hartford, Conn. Both papers were so detailed and thoroughgoing in their treatment that upon their presentation there was no longer available any time for discussion from the floor. The session adjourned to make ready without delay for the luncheon.

Final Afternoon Session

This session, which began at 2:00 o'clock, was opened with prayer by Monsignor John J. Carberry, of Brooklyn, N. Y., the newly elected President. The retiring President, Monsignor Gannon, then announced the results of the election.

National Officers:

President: Rt. Rev. John J. Carberry, S.T.D., Ph.D., J.C.D., LL.D., Chancery Office, 75 Greene Avenue, Brooklyn (38), N. Y.

Vice-President: Rt. Rev. Josiah G. Chatham, S.T.D., J.C.D., St. Richard's Church, 1242 Lynwood Drive, Jackson (6), Miss.

General Secretary-

Treasurer: Rev. Clement Bastnagel, J.U.D., The Catholic University of America, Washington (17), D. C.

Recording Secretary: Rev. John P. Connolly, J.C.D., Chancery Office, 445 Church Street, San Francisco (14), Calif.

Thereupon he read the following list of appointments to the various Committees for the following year:

Committee on Research and Discussion:

Chairman: Rt. Rev. Joseph I. Johnson, J.C.D., 85 Spring Street, Springfield (5), Mass.

Member: Rev. John S. Quinn, J.C.D., 47 East Superior Street, Chicago (11), Ill.

Member: Very Rev. Benjamin F. Farrell, J.C.D., St. Francis Xavier Church, 912 Seventh Street, Box 272, Moundsville, W. Va.

Committee on Membership:

Chairman: Rev. Clement Bastnagel, J.U.D., The Catholic University of America, Washington (17), D. C.

Member: Rt. Rev. Timothy P. O'Connell, D.D., Chancery Office, 1 Tuckerman Street, Worcester, Mass.

Member: Very Rev. Msgr. Thomas A. Donnellan, J.C.D., 460 Madison Ave., New York (22), N. Y.

Committee on General Arrangements:

Chairman: Rt. Rev. Edward M. Burke, J.C.D., 719 N. Wabash Ave., *Chicago* (11), Ill. (Term ends in October, 1956)

Member: Rt. Rev. Walter J. Furlong, P.A., 573 Washington Street, Newton (58), Mass. (Term ends in October, 1957)

Member: Rt. Rev. Joseph B. Stenger, J.C.D., 1106 Lebanon Ave., Belleville, Ill. (Term ends in October, 1958)

Committee for the Promoting of Regional Conferences:

Chairman: Very Rev. Benjamin F. Farrell, J.C.D., St. Francis Xavier Church, 912 Seventh Street, Box 272, Moundsville, W. Va.

Member: Very Rev. Msgr. Joseph Vath, J.C.L., 2809 S. Carrollton Avenue, New Orleans (18), La.

Member: Rev. Francis N. Korth, S.J., J.C.D., St. Mary's College, St. Marys, Kansas.

Executive Committee:

Chairman: The President

Members *ex officio:* The Vice-President
The Recording Secretary
The General Secretary-Treasurer

Members by Appointment: Rt. Rev. Louis A. Wolf, 1907 E. 81st Street, Cleveland (3), Ohio. (Term ends 1956)

Rt. Rev. Herman P. Fedewa, St. Mary's Cathedral, 219 Seymour Ave., Lansing (33), Mich. (Term ends 1956)

Rt. Rev. James P. Kelly, J.C.D., 93 Lafayette Street, Suffern, New York. (Term ends 1957)

Rt. Rev. John F. Gannon, V.G., Chancery Office, 1 Tuckerman Street, Worcester, Mass. (Term ends 1957)

Convention City for 1956: Atlantic City, N. J. (18th annual convention). Date of 1956 Convention: October 23rd and 24th. Headquarters for 1956 Convention: Hotel Claridge.

Members of the Local Arrangement Committee for the Atlantic City Convention:

Appointed by the President:

Chairman: Rt. Rev. Augustine T. Mozier, P.A., V.G., 721 Cooper Street, Camden (1), N. J.

Member: Rev. Joseph A. M. Quigley, J.C.D., St. Charles Seminary, Overbrook, Philadelphia (31), Pa.

Member: Rev. Ladislaus J. Bazela, J.C.D., 721 Cooper Street, Camden (1), N. J.

Member: Rev. Thomas H. Sharkey, J.C.D., 721 Cooper Street, Camden (1), N. J.

Bishop MacKenzie graciously consented to preside over the final session, a panel discussion "lack of form" marriages. He introduced the Rt. Rev. Josiah G. Chatham, J.C.D., of Natchez, Miss., who offered a paper that summarized what had historically been required for the canonical or juridical form in the contracting of marriage. The Rt. Rev. John J. Carberry, J.C.D., of Brooklyn, N. Y., then treated in a paper the procedure requisite in the handling of "lack of form" marriages. In his presentation Monsignor Carberry announced the results of a poll made in the 127 dioceses of the United States. During the ensuing discussion Monsignor Joseph L. Manning, J.C.D., of San Antonio, Texas, adverted to a situation that could readily obtain among the migratory Mexican workers, particularly in the State of Texas. Special allowance for valid marriages contracted apart from the assistance of a priest and witnesses was called for in many cases. In only rare instances was a judicial investigation or court procedure mandatory. The generality of cases could be handled by way of an administrative investigation and procedure. Monsignor Carberry spoke a word of thanks to all who had participated in the lively discussion.

With a prayer led by Bishop Hannan, the seventeenth annual meeting of the Canon Law Society of America came to its close.

CLEMENT BASTNAGEL